Nos. 11839 and 12082

In the United States Court of Appeals for the Ninth Circuit

TOM C. CLARK, ATTORNEY GENERAL OF THE UNITED STATES, AND WILLIAM E. CARMICHAEL, DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE, UNITED STATES DEPARTMENT OF JUSTICE, DISTRICT 16, APPELLANTS

v.

ALBERT YUICHI INOUYE, MIYE MAE MURAKAMI, TSUTAKO SUMI AND MUTSU SHIMIZU, APPELLEES

GEORGE C. MARSHALL, AS SECRETARY OF STATE, APPELLANT

v.

MIYE MAE MURAKAMI, TSUTAKO SUMI AND MUTSU SHIMIZU, APPELLEES

ON APPEALS FROM JUDGMENTS OF THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

BRIEF FOR APPELLANTS

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BRIEF FOR APPELLANTS

JURISDICTIONAL STATEMENTS

In No. 11839, the appeal is from a judgment entered September 18, 1947 (R. 369–370)[1] by the United States District Court for the Southern District of California, Central Divi-

[1] References to the transcript of record in No. 11839 will be designated herein by the symbol R.; those to the transcript of record in No. 12082 by the symbol M. R.

sion, restoring appellees therein to the rights of United States citizenship and declaring null and void renunciations of citizenship theretofore executed by them and approved by the Attorney General pursuant to the provisions of Section 401 (i) of the Nationality Act of 1940, as amended (8 U. S. C. 801 (i)).

Appellees' amended complaint, filed in the court below on February 11, 1947 (R. 2–15), named as defendants Tom C. Clark, Attorney General of the United States, and Albert Del Guercio, at that time Acting District Director of the Immigration and Naturalization Service of the Department of Justice for the Southern District of California. William A. Carmichael, having succeeded to the office held and functions performed by Albert Del Guercio, was thereafter substituted as a party defendant pursuant to stipulation between the parties (R. 340).

In Paragraph IV of the amended complaint, appellees alleged that the court below had "jurisdiction herein by virtue of Title 8, United States Code, Sec. 903" (R. 3), which provides in pertinent part as follows (Section 503 of the Nationality Act of 1940; 54 Stat. 1171):

> If any person who claims a right or privilege as a national of the United States is denied such right or privilege by any department or agency, or executive official thereof, upon the ground that he is not a national of the United States, such person, regardless of whether he is within the United States or abroad, may institute an action against the head of such department or agency in the District Court of the United States for the District of Columbia or in the district court of the United States for the district in which such person claims a permanent residence, for a judgment declaring him to be a national of the United States. * * *

In their answer to the allegation of the amended complaint that the court below had jurisdiction by virtue of the statutory provision above quoted, appellants neither admitted nor denied "the conclusion of law comprising Paragraph IV of the said complaint, regarding the question of jurisdiction as a matter to be determined by the court" (R. 17–18). It is the position

of the appellants on this appeal, despite the conclusion of the court below to the contrary (R. 367), that that court was without power under the provisions of Section 503 of the Nationality Act of 1940 to entertain this proceeding for the reason that neither the Attorney General nor any other official of the Department of Justice was denying, or has since denied, appellees or privilege of nationals of the United States.

The court below further concluded as a matter of law (R. 367) that the entry of its judgment was authorized under the provisions of Section 274d of the Judicial Code as amended (28 U. S. C. §§ 2201, 2202, formerly 28 U. S. C. § 400).[2] It is submitted herein that this holding was likewise erroneous.

In No. 12082, the three appellees involved are likewise parties to the proceeding in No. 11839. The appeal in No. 12082 is from a judgment entered August 27, 1948, (M. R. ——) by the United States District Court for the Southern District of California, Central Division, also declaring null and void, and cancelling, the renunciations theretofore executed by the appellees. The judgment contained a further order that the Secretary of State "recognize and treat" the appellees as citizens of the United States (id.)

The complaint in No. 12082 alleged (M. R. ——), and the answer admitted (M. R. ——), that the appellees had on various dates in May and June 1948, duly applied for passports and that officers of the State Department had refused to issue passports to them on the sole ground that appellees were no longer citizens or nationals of the United States by reason of the aforesaid renunciations of United States nationality, thereby denying appellees claimed rights as such.

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[2] § 2201. Creation of remedy—

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

§ 2202. Further relief—

Further necessary or proper relief based on a declartory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

The jurisdiction of the District Court rests upon the provisions of Section 503 of the Nationality Act of 1940 set forth *supra,* p. 2. This Court has jurisdiction to review both of the judgments of the District Court under Title 28, United States Code, section 1291.

QUESTIONS PRESENTED

In No. 11839 the questions presented are five in number as set forth below:

1. Whether, in the absence of any showing that the Attorney General or other executive officer of the Department of Justice has denied to the appellees any right or privilege of a national of the United States, the action in No. 11839 may properly be maintained under the provisions of Section 503 of the Nationality Act of 1940.

2. If not, whether the relief sought in No. 11839 may properly be granted by way of a declaratory judgment under the provisions of Sections 274d of the Judicial Code (28 U. S. C. §§ 2201, 2202).

If either of the foregoing questions be answered in the affirmative, then the following questions are presented in No. 11839:

3. Whether the acts of the appellees in renouncing their United States citizenship pursuant to the provisions of the Act of July 1, 1944 (58 Stat. 677, 8 U. S. C. 801 (i)) are null and void because made as a result of mental fear, intimidation and coercion depriving them of the free exercise of their will.

4. Whether an individual eighteen years of age may make an effective renunciation of citizenship under the foregoing statutory provision.

5. Whether the provisions of the Act of July 1, 1944, *supra,* are violative of the Fifth or Fourteenth Amendments to the Constitution or constitute an unconstitutional delegation of power to the executive branch of the Government.

In No. 12082, the questions numbered 1, 2, and 4, above are not presented. The questions numbered 3 and 5 above, however, are common to both appeals.

STATUTES INVOLVED

The provisions of Section 503 of the Nationality Act of 1940 (8 U. S. C. § 903), and those of Section 274d of the Judicial Code as amended (28 U. S. C. §§ 2201, 2202) are set forth *supra* at page 2 and in note 2, page 3, respectively. The provisions of Section 401 of the Nationality Act of 1940 as amended by the Act of July 1, 1944 (54 Stat. 1168; 8 U. S. C. 801 (i) are as follows:

> A person who is a national of the United States whether by birth of naturalization, shall lose his nationality by:
>
> * * * * *
>
> (i) making in the United States a formal written renunciation of nationality in such form as may be prescribed by, and before such officer as may be designated by, the Attorney General, whenever the United States shall be in a state of war and the Attorney General shall approve such renunciation as not contrary to the interests of national defense.[3]

STATEMENT

I. The nature of the case

The appellees in No. 11839 are four persons of Japanese ancestry born in the United States and residents of the State of California, who, on various dates in and between December 1944 and March 1945, made formal applications for permission to renounce their United States' citizenship (R. 149–151; 159–160; 176–178; 194–196) pursuant to the provisions of the Act of July 1, 1944, *supra,* and regulations issued by the Attorney General implementing that Act.[4] Thereafter, following individual hearings (R. 151–153; 161–163; 178–180; 196–197)

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[3] Section 801 (i), with which this proceeding is primarily concerned, together with certain other permanent war time laws, was rendered inoperative by the Joint Resolution of July 25, 1947; ch. 327, sec. 3, 67 Stat. 451 (Public Law 239, p. 7, 80th Cong., 1st sess.). Section 801 in its entirety is set forth as Appendix A, *infra.*

[4] These regulations are set forth in 9 F. R. 12241 and the pertinent provisions thereof are contained in Appendix B, *infra.*

before officers appointed pursuant to such regulations, each of the appellees signed formal renunciations of citizenship (R. 153–154; 163–164; 181–182; 198–199) which became effective, as provided by the Act, upon their subsequent approval by the Attorney General as not contrary to the interests of national defense (R. 154; 164; 182; 199). The proceeding in No. 11839 was brought to obtain the cancellation of all such renunciations, and a judgment that the appellees therein are nevertheless citizens and nationals of the United States (R. 15). The proceeding in No. 12082 was brought in behalf of three of the four appellees in No. 11839, and sought the same relief.

In appellees' amended complaint in No. 11839 (R. 2–15), filed in the Court below on February 11, 1947, the foregoing renunciations are admitted, but it is alleged that "said renunciations were not of their [the appellees'] own free and voluntary acts; but on the contrary, were the result of undue influence, mistake, misunderstanding and coercion" (R. 3). Three of the four appellees (Sumi, Murakami, and Shimizu) were at the time of their renunciations, and each had been for approximately a year prior thereto, at the Tule Lake Relocation Center. This center was one of ten such facilities established for occupancy by persons of Japanese ancestry following their exclusion from the West Coast area shortly after the Japanese attack on Pearl Harbor. With respect to these appellees, the amended complaint further alleged in substance (1) that the husband of the appellee Sumi, as the result of pressures exerted upon him by pro-Japanese elements among the Tule Lake residents, "coerced and compelled his wife to renounce her citizenship against her will and desires" (R. 6–7); (2) that the appellees Murakami and Shimizu were each married to alien Japanese and that each renounced because they were informed that renunciation was the only method to avoid enforced separation from their husbands (R. 5, 8) and, more generally, because of the existence of a state of "hysteria, tension, fear and fright" (R. 6) "aggravated by threats and rumors of threats, killings, stabbings imposed upon those who did not renounce * * *" (R. 7–8). To each of these allegations the appellants'

answer, filed on June 2, 1947 (R. 17–24), interposed a general denial.

The three appellees above referred to are also appellees in No. 12082. The complaint in that proceeding, filed in the District Court on July 6, 1948 (M. R. —), contained identical allegations (except as to certain jurisdictional averments) with respect to these appellees as were contained in the amended complaint filed in No. 11839. Since the allegations of the answers to both complaints were not in substance different, we shall describe herein the averments of the pleadings in both cases together, except where otherwise specifically stated.

Aside from the general allegation quoted at the beginning of the preceding paragraph, no specific allegations as to the reasons motivating the renunciation of the appellee Inouye are contained in the amended complaint in No. 11839. This appellee is not a party to the proceeding in No. 12082. He was not located at the Tule Lake Center at the time of his renunciation but was instead at the Manzanar, California, Center (R. 182). The amended complaint alleged (R. 4) and the answer admitted (R. 18) that Inouye was seventeen years of age at the time he first instituted steps looking towards the renunciation of his citizenship and that he was eighteen years old at the time he made formal renunciation.

Both complaints further alleged that the Act of July 1, 1944 (hereinafter referred to as the renunciation statute), was unconstitutional in that citizenship conferred by the Fourteenth Amendment cannot be renounced or, if it may be, that authority to approve such renunciations may be granted only to the judicial branch of the government; further that the statute deprived appellees of liberty without due process of law in contravention of the Fifth and Fourteenth Amendments: that the statute constituted an unlawful delegation of power to the executive branch of government; and that the "renunciation procedure is an attempt to enforce an act of Congress which is vague and indefinite as to the standards to be followed by which renunciation is to be effected" (R. 9).

Finally, as a second cause of action, the complaints alleged in substance that citizens of Japanese ancestry, among them the appellees, were discriminatorily treated by the Government

after February, 1942; that following enactment of the renunciation statute it was made known to such citizens that they could renounce; that the decision of each of the appellees to renounce was substantially affected by the alleged discriminatory treatment and by the spread of misinformation, rumor and fear in the relocation centers which the Government failed to prevent; that in these circumstances the acceptance of appellees' renunciation applications "was unfair, unreasonable and a violation of the due process of law clause of the Fifth Amendment to the Constitution * * *," and that because announcements of the right to renounce conferred by the Act of July 1, 1944, were allegedly made only to citizens of Japanese ancestry, the ensuing approval of appellees' renunciation requests constituted an unreasonable discrimination on the basis of race in violation of the guarantees of the Fifth Amendment (R. 10–15).

These allegations were in the main denied by the appellants' answers (See R. 20–24), save that "the spread of misinformation, rumor, conjecture and fear throughout the camps" was admitted, it being denied, however, that the prevention of such spread was possible or that reasonable, although not entirely successful, preventative steps were not taken by both the War Relocation Authority and the Department of Justice (R. 21–22).[5]

Following the filing of their answer in No. 11839 the appellants moved in the Court below for summary judgment on the basis of attached affidavits (R. 26). The appellees in that case cross-moved for summary judgment (R. 208) and also presented affidavits in support thereof. These motions were orally argued and submitted on August 18, 1947 (R. 322). On August 22, 1947, however, the parties, prior to a decision of these motions, entered into a stipulation (R. 323–324) providing that the Court below might render a decision on the merits upon a record comprised of the affidavits submitted in con-

[5] The answers further admitted the allegation that the renunciation procedure was explained only to citizens of Japanese ancestry and not to others, but asserted that the reason for this was that only from such persons were a sufficient number of requests received to warrant the giving of information as to how renunciations could be accomplished. (R. 22–23.)

nection with the respective motions for summary judgment. In No. 12082 the parties thereto also moved and cross-moved for summary judgment. Save for certain excluded materials relating to Inouye, the affidavits filed in connection with these motions were those filed and of record in No. 11839. A stipulation similar to that made in No. 11839 was also entered into by the parties providing that the Court might render a decision on the merits (M. R. ——).

As an integral part of both stipulations, it was agreed that the various affiants would, if called as witnesses, testify to the factual matters set forth in their respective affidavits and that the courts might utilize such data, if otherwise competent, as the basis for their decisions (R. 323; M. R. ——). The summary which follows of the events preceding, and the circumstances surrounding, the renunciations is derived primarily from such sources. Much of the preliminary material dealing with evacuation and resettlement, registration, segregation, and the resegregation movement is taken from the one volume study of wartime Japanese American evacuation and resettlement by Dorothy J. Thomas and Richard Nishimoto entitled *The Spoilage* [6] which is incorporated in the record in No. 11839 through the affidavit of A. L. Wirin (R. 209–213) filed in support of appellees' motion for summary judgment therein, and in No. 12082 by the above-mentioned stipulation of the parties in that case.

II. BACKGROUND OF THE RENUNCIATIONS

Evacuation and Resettlement.—The congeries of Executive Orders of the President, Public Proclamations and Civilian Exclusion and Restrictive Orders issued by the Secretary of War and the Military Commander of the Western Defense Com-

[6] Univ of Cal. Press, 1946. Reference to this source will be designated herein by the symbol "T&N" followed by page references. While, obviously, this book does not constitute competent evidence in and of itself, most of its pertinent factual statements have been checked against official records and, in the main, have been found substantially accurate. Accordingly, the exhibit having been introduced by the appellees, the Government now agrees that the factual statements set forth therein, to the extent adopted in this statement, but to no greater extent, may be regarded as facts in this case.

mand, and the implementing Act of March 21, 1942 (56 Stat. 173), whereby the exclusion and relocation of citizens of Japanese ancestry residing in the West Coast areas was accomplished, have been described in some detail in several Supreme Court decisions [7] and recapitulated by that Court in *Ex parte Endo,* 323 U. S. 283, at pp. 285–290. In the early development of these measures, the intent was solely to exclude from these areas, as a matter of military necessity for the prevention of espionage and sabotage,[8] persons having common ancestry with the enemy that launched the Pearl Harbor attack. Early manifestations of public hostility in localities receiving an influx of evacuees from the prescribed areas, however, caused, by the end of March 1942, a temporary abandonment of plans to permit voluntary resettlement (T&N,[9] 10–11, 24–26). The great bulk of evacuees were thereafter detained in temporary "assembly centers" and from these were transported to one of the ten relocation centers administered by the War Relocation Authority (WRA), an agency created by Executive Order 9102 of March 18, 1942 (7 Fed. Reg. 2165). When these movements had been completed, a total of 120,313 persons had been distributed among the relocation centers,[10] with provision having been made for the placement of some 16,000 at Tule Lake, the center with which this proceeding is primarily concerned (T&N, 27). None of the appellees, however, were assigned directly from assembly centers to Tule Lake. Their ultimate arrival at that Center (except for the appellee *Inouye*) [11] occurred as a result of a later regrouping or "segregation" of evacuees pursuant to WRA policies and directives hereinafter described.

Due to the swiftness with which evacuation had been required many of the evacuees undoubtedly suffered severe financial

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[7] See *Hirabayashi* v. *United States,* 320 U. S. 81 and *Korematsu* v. *United States,* 323 U. S. 214.

[8] Cf. Executive Order #9066 (7 F. R. 1407); *Korematsu* v. *United States,* 323 U. S. 214, 217–219; *Thomas and Nishimoto, op. cit., supra,* 10, 24.

[9] See note 6, *supra.*

[10] WRA, *The Evacuated People, A Quantitative Description* (GPO, 1946) pp. 2, 9. For the convenience of the Court copies of this publication have been lodged with the Clerk.

[11] As before stated, Inouye, so far as the record shows, was located in the Manzanar Center, and never at Tule Lake.

losses (see, T & N, 14–17).[12] The initial attitude of the first evacuees to reach Tule Lake, however, appears in the main to have been one of cooperation with the War Relocation Authority (Ibid. 38). The deterioration of this attitude which ensued appears to have been caused, in part, by the curtailment of many projects originally planned by the WRA for the benefit of the evacuees (see, T&N, 25) and by the establishment of a stringent wage policy for work performed at the Center (see, Ibid. 33–35). Another major factor in the growth of discontent among the evacuees at Tule Lake seems to have been the rapid development of intergroup antagonisms, which arose both between early and later arrivals at the Center and between the older noncitizen evacuees known as Issei and the first generation of American-born persons of Japanese ancestry known as Nisei (T&N, 40–41).[13] In August of 1942 general dissatisfaction with working conditions culminated in two short-lived strikes and in October of the same year a concerted protest developed leading to the discharge of an unpopular Caucasion assistant mess supervisor (T&N, 41–43). The cleavage between Nisei and Issei was manifested in November by the nearly successful rejection of all "self-government," apparently because of a WRA ruling that only citizens were eligible for election as popular representatives (T&N, 44–45).

Registration.—Although, as above stated, plans for large scale, voluntary resettlement of evacuees had been temporarily

[12] By Public Law 886, 80th Congress, approved July 2, 1948, the Congress recognized a moral obligation on the part of the United States to reimburse evacuees for property losses that are "a reasonable and natural consequence of the evacuation," excluding, however, among others, "any claims * * * by or on behalf of any person who after December 7, 1941, was voluntarily or involuntarily deported from the United States to Japan, or by or on behalf of any alien who on December 7, 1941, was not actually residing in the United States."

[13] A third distinct category of evacuees were known as Kibei—Japanese Americans born in the United States but who had returned to Japan to be educated in whole or in part in that country and had then returned to the United States. (See T & N, Note 7, p. 3.) While it is said that there were about "20,000 American-born evacuees who had been to Japan at some time" only about 9,000 "among the 72,000 American citizens in the evacuee population" had "received three or more years of education in Japan, particularly after the age of 13." These have been called " 'real' Kibei." WRA, *A Story of Human Conservation* (GPO, 1946), pp. 6–7.

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abandoned because of general hostility toward Japanese-Americans, the WRA in the fall and early winter of 1942 was still seeking expeditious methods of relocating them outside the Relocation Centers on an indefinite leave basis.[14] Accordingly, WRA decided to make a blanket determination of persons eligible for indefinite leave, irrespective of whether or not these persons had yet indicated a desire to resettle (T&N, 55). In February 1943 all evacuees 17 years of age or older, save those who had already requested repatriation to Japan (T&N, 73, 76), were ordered to execute lengthy registration forms prepared by the War Department and WRA, jointly,[15] together with abbreviated WRA leave-clearance forms (T&N, 58). As will appear herein, the crucial question was No. 28. Male citizens of Japanese ancestry 17 years of age and over were asked:

> Question 28: Will you swear unqualified allegiance to the United States of America and faithfully defend the United States from any and/or all attack by foreign or domestic forces and foreswear any form of allegiance or obedience to the Japanese Emperor, or any other foreign government, power, or organization?

Female citizens were asked this question in a somewhat different form, as follows:

> Question 28: Will you swear unqualified allegiance to the United States of America and foreswear any form of

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[14] T&N, 54–55. The WRA publication, *The Relocation Program* (GPO, 1946), relates in some detail the Authority's experience in this field. Early relocations were slow due to cumbersome procedures and reluctance of evacuees to leave the centers (Id. pp. 18, 30, 31). The registration process, hereinafter outlined, "clarified leave for most of the evacuees" (Id. p. 24) and by "early summer 1943 the flow of evacuees from the centers was gaining momentum" (Id. p. 30). During this period WRA promoted relocations by grants of financial assistance (Id. p. 25), by furnishing factual information concerning areas offering employment (Id. pp. 33–34), and by otherwise encouraging resettlement (T&N, 103). However, it was the declared policy of WRA not "to force people to relocate when they did not want to be relocated" (T&N, 59. But, cf. Id., 103).

[15] The interest of the War Department in the registration program was to obtain data upon which to recruit combat teams of American citizens of Japanese ancestry to serve with the armed forces (R. 93). Question No. 27 on this form inquired as to the willingness of the registrant to serve with the armed forces of the United States.

allegiance or obedience to the Japanese Emperor or any other government, power, or organization? [16]

At Tule Lake vigorous and prolonged resistance developed against the process of registration (see T&N, 72–80). Belated recognition of the fact that evacuees who had already requested repatriation had been made exempt from compulsory registration led to a widespread movement among the Tule Lake evacuees to obtain repatriation request blanks (T&N, 76). When these were refused with the announcement that contemporaneous repatriation requests would not be accepted in lieu of registration, many Tule Lake evacuees refused absolutely to register. Thirty-four Nisei residing in Block 42,[17] a focal point of such resistance, were ultimately jailed (T&N, 77). A substantial number of Kibei [18] banded together in the drafting of petitions demanding that they be treated as Japanese nationals and reaffirming their "absolute refusal" to register. Not until February 23, 1943, did this resistance movement subside following the issuance of an Army statement clarifying the relation of the questionnaire to the selective service program (T&N, 79–80). The registration of citizens, which had been scheduled to terminate on March 2, 1943, was thereafter continued until March 10. Alien registration, begun on March 3, extended until March 25. At the termination of these periods some 600 male Nisei and Kibei and slightly over 500 female

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[16] Although it was originally contemplated that Question 28 in the form given immediately above would be asked of Japanese aliens, it was soon realized that since Japanese aliens are ineligible for American citizenship, an affirmative answer to this question would be tantamount to a renunciation of any claim to Japanese citizenship and would place them in the status of "stateless persons" (T & N, 60–61). Accordingly, Question 28 was modified and, as submitted to Japanese aliens, read as follows:

> Question 28: Will you swear to abide by the laws of the United States and to take no action which would in any way interfere with the war effort of the United States?

[17] The block, composed of 14 barracks, was the basic unit of the evacuee community. Ultimately, following segregation, although not at this time, there were 80 blocks at Tule Lake. Nine blocks constituted a ward, and each of the wards was separated from others by firebreaks 200 feet wide. For a description of the physical features of the Tule Lake Center see T&N 28–30.

[18] See note 13, *supra*.

citizens had failed to register;[19] the numbers of male and female Issei who failed to register are not available but it has been estimated that male alien nonregistrants comprised 41 percent, and female alien nonregistrants 30 percent, of all evacuees at Tule Lake falling into these respective categories (T&N, 82). When these nonregistrants are grouped with those evacuees giving a "no" answer to Question 28,[20] it is revealed that 49 percent of all male citizen evacuees 17 years of age and over at Tule Lake, and 42 percent of the entire evacuee body at Tule Lake in the same age category either gave nonaffirmative replies to Question 28 or refused to register (T&N, 62–63). By contrast, the over-all percentage of evacuees 17 years of age and over giving nonaffirmative replies or refusing to register at the other nine relocation centers was about 10 percent (Ibid.).

Segregation.—On July 15, 1943, the WRA issued an administrative instruction designating the Tule Lake Relocation Center as the facility for the segregation of "those persons of Japanese ancestry residing in relocation centers who by their acts have indicated that their loyalties lie with Japan during the present hostilities.[21] Those evacuees then at Tule Lake who had not indicated Japanese loyalties were to be shifted from Tule Lake to another relocation center of their choice. The persons designated for segregation in Tule Lake comprised all evacuees falling into any of three categories:

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[19] Among the male nonregistrant citizens were some 100 Kibei who had been removed from the Center because of their adamant stand against registration (T&N, 82).

[20] See p. —, *supra.*

[21] WRA administrative instruction #100, July 15, 1943, as quoted by Thomas and Nishimoto, *op. cit., supra*, p. 84. This administrative action appears to have been taken in response to Senate Res. 166, 78th Cong., 1st Sess., approved July 6, 1943 (79 Cong. Rec. 7288) whereby the WRA was requested "to take such steps as may be necessary for the purpose of segregating persons of Japanese ancestry in relocation centers whose loyalty to the United States is questionable or who are known to be disloyal. * * * for the purpose of establishing additional safeguards against sabotage by such persons."

The administrative regulations relative to the establishment, operation and government of, movements to and from, and residence in the segregation center are set forth in full in Appendix C of this brief *infra.* These regulations constitute Chapter 110 of the WRA Manual. Dates of issuance are shown and superseded provisions if any, are indicated, following the text of particular regulations.

I. Applicants for repatriation or expatriation to Japan.[22] (W. R. A. Manual, Chap. 110 § 110.3.1A, Appendix C, *infra.*)

II. Persons who refused to answer or gave negative answers to Questions No. 28 (*supra,* p. 12) and who had not changed their answers prior to October 6, 1943 [originally July 15, 1943], except those who changed their answers thereafter and satisfied the Project Director that the changes were bona fide (Id. § 110.3.1B).[23]

III. Persons denied leave clearance on grounds relating to security risk (Id. § 110.3.1C).[24]

Members of the immediate families of persons in the above categories were permitted to go to or remain in the Tule Lake center with them if they wished to do so.[25]

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[22] The Project Director had discretion to make exceptions in hardship cases (§ 110.3.1A). Instructions were given concerning necessary arrangements for exchanges during the war, if desired (§ 110.2B). This category of segregees was the largest at Tule Lake. It numbered 7,222 of which 4,698 were American-born. (*The Evacuated People,* p. 169. See note 10, *supra.*)

[23] "Each person who had given a negative answer (or none at all) to the loyalty question was asked if he wished to change his answer." WRA Semi-Annual Report, July 1 to December 31, 1943, p. 3. (See, also T & N, 86). This classification totaled 4,785 of which 3,274 were American born. (*The Evacuated People, supra,* p. 169.)

[24] There were only 514 segregees in this category, of whom 348 were American-born (Ibid.).

[25] This classification, obviously composed largely of children too young to register (see Id., Table 43a, p. 107), numbered 5,615, of which 4,080 were American-born (Id. p. 169).

Appellees *Murakami, Sumi* and *Shimizu,* alleged that they went to Tule Lake because their husbands had applied for repatriation (R. 5, 6, 7, 314, 317). While these allegations may be substantially correct in view of their opportunities voluntarily to change their positions with reference to segregation, they should not be construed as averments that these appellees were not themselves properly subject to segregation independently of any action by their husbands. The allegation (R. 12, M. R. ——) by these appellees, that they were found by WRA to be free of any suspicion of disloyalty (which was denied in both actions R. 21, stipulation M. R. ——), and the finding of the courts below (R. 353, M. R. ——) that they had been found free of any suspicion of disloyalty to the United States, are utterly without support in the record. It may be that this allegation and finding were based upon the supposition that none of them technically fell within segregation classification I–III above. (Cf. *Dembitz, Racial Discrimination and the Military Judgment* (1944), 45 Columbia Law Rev. 175, 221.) If so, this supposed fact, even if it would be sufficient to support the allegation and finding, nowhere appears in the record and cannot be conceded.

No person thus transferred or remaining in the Tule Lake center could be granted leave clearance directly from the center (Id. § 110.9.1) but provision was made for transfers from Tule Lake to other centers, from which leave clearances could be obtained (Id. § 110.9.2). Persons denied such transfers could file appeals with the Board of Appeals for Leave Clearance (Ibid).[26]

By June of 1944, when the segregation process had been substantially completed, transferees from other centers comprised 66 percent of the Tule Lake evacuee population (T&N, 107). The remaining 34 percent consisted of evacuees who were resident at Tule Lake prior to segregation and who remained at that center. They became known as "Old Tuleans." About half of the American-born population over 15 years of age, including appellees, *Sumi* and *Shimizu* (R. 152, 197), had received education in Japan (T&N, 370; cf. *The Evacuated People,* p. 176).

As previously indicated, the entire evacuee body at Tule Lake following segregation was not composed solely of persons segregated because falling within Classes I–III. In addition to the technically "loyal" evacuees who either migrated to or remained at Tule Lake in order to be with members of their immediate familes (see note 25, *supra*), approximately 1,100 Old Tuleans, who were eligible for resettlement in view of their affirmative answers to Question No. 28, refused to leave (T&N, 104).[27]

Events Following Segregation.—What follows can be little more than a calendar of events. Much as had arrivals at Tule Lake in June of 1942 found themselves at a disadvantage with respect to earlier settlers, so now did transferees under the segregation program find themselves in the position of disadvantaged migrants with respect to the Old Tuleans, who occupied both the best jobs and the best housing facilities (T&N, 109–

[26] The record does not show the extent to which the procedures for transfer from Tule Lake were invoked. It does establish, however, that they were employed to some extent. (R. 214; T&N, 276. Cf. R. 50, 321). See, also, *The Evacuated People* (note 10, *supra*) at p. 40.

[27] Table 77 of *The Evacuated People, supra,* at p. 169, makes no special mention of this group of Old Tuleans since all "but 34 * * * eventually 'legitimized' their satus" (T&N, 104 n).

110). In September and October 1943 sporadic protests against this situation culminated in several minor outbursts of violence which sought principally to subordinate American customs to those of the Japanese (see Ibid., 111). On October 15 a truck carrying evacuee farm workers to the fields overturned, seriously injuring four and killing one. Approximately 800 farm workers, seeking further safeguards against such accidents and compensation for those injured, ceased work (Ibid, 114–119). Although evacuees representing the farm group repeatedly sought to negotiate concerning these grievances and others, the Center's administrative officers, faced with the possible loss of crops at harvest time, terminated the employment status of the farm workers and brought in evacuees from other centers at much higher wages to do the harvesting at Tule Lake (Ibid., 119–128). This move in turn generated resentment and on November 1, a tremendous crowd of evacuees, having learned of the recent arrival of WRA Director Dillon Myer at the Center, surrounded the administration headquarters to await the presentation of their grievances to Myer by a committee of their representatives.[28] Evacuees stationed themselves at the doors of the administration building to prevent the departure of any of the Caucasian personnel (Ibid, 131–132). During the time negotiations were being conducted a number of evacuees, without the knowledge of the negotiating committee, entered the separate hospital building and attacked the Caucasian Chief Medical Officer of the Center (Ibid, 132–133). On November 4, following a further outbreak of violence, troops were called into the Center and the Army took over its administration from WRA personnel. Martial law was declared on November 13. Thomas and Nishimoto have described and documented the events which occurred during Army control of the Center, which continued until January 15 (see *The Spoilage,* pp. 147–183) and have summarized these 10 weeks as follows:

[28] This committee had been selected by the membership of the *Daihyo Sha Kai* or representative body, the 64 members of which had themselves been elected, one from each block, at a general evacuee election held on October 16, 1943. T&N 116–119.

> The * * * period was one of turmoil, idleness, impoverishment and uncertainty for the general population, who continued their partial strike and passive resistance. For the leaders of the *Daihyo Sha Kai*,[29] for various other alleged instigators of the "riot," and for numbers of other individuals who had opposed the administration in one way or another, it was a period of increasingly severe repression: midnight pick-ups, isolation and incarceration in a stockade and "bull pen." It resulted in the disintegration of the *Daihyo Sha Kai* as a political organization, the emergence of an organization with collaborative aims (Coordinating Committee) and of an underground antiadministration pressure group (Resegregationists). Coincident with the development of these divergent policies came a sharpening of the distinction between the "disloyal" and the "loyal," an intensification "of race-consciousness," and a wave of hate, fear, and suspicion toward dissenters, "fence-sitters," collaborationists and informers (T&N, 147).

The ultimate termination of Army control of the Tule Lake administration came about following the holding of a referendum among evacuees. The issue posed was whether all of the evacuees should immediately return to work or whether what was termed the "status quo" (involving continued work stoppage by the farm workers and others and the continuation of "passive resistance") should be further maintained. Voting was by secret ballot, with soldiers present at every polling place. The results showed 4,593 in favor of a return to normal conditions; 4,120 in favor of maintaining the "status quo" (T&N, 180–181). Although individual preferences are, of course, unknown, a consideration of the results per voting unit reveals a dichotomy of attitudes between transferees and Old Tuleans. Generally speaking, and with some exceptions, blocks having the highest proportion of transferees voted most strongly in favor of continued resistance; correspondingly blocks principally composed of Old Tuleans in the main voted in favor of a return to work (T&N, 182–183). When the results were

[29] See note 28, *supra*.

known, martial law was lifted and on January 15, 1944, the management of the Center was returned to the WRA (Ibid.).

The ensuing months witnessed the development of trends noted in connection with the period of Army control. A major source of grievance to the evacuees was the continuation of the "stockade", originally established by the Army for the confinement of persons participating in the November 4 disturbance (T&N, 284–285). Thereafter repressive measures against "status quo" leaders increased to the extent that there were 247 evacuees incarcerated in the stockade at the time the referendum was held in the middle of January (Ibid., 195), and although the management of the Center was otherwise returned to the WRA following the referendum, the Army continued in control of the stockade until May 25 (Ibid., 248–249). Even thereafter the stockade was continued in existence, with further "pickups" tending to offset releases. Some 16 evacuees originally incarcerated during the period of complete military control were still being held on July 19 when these detainees embarked on a hunger strike (Ibid., 292–294). A Center-wide petition seeking their release was circulated on July 28 and is said to have been signed by over 8,000 residents (Ibid., 296–297). The hunger strike, interrupted by the hospitalization of the detainees on July 29, was again resumed following their return to the stockade on August 5 and lasted until August 13, at which time the administration capitulated by promising their quick release (Id., 295–299, 289).

The existence of the stockade and the frequency of "pickups" during the period above described magnified tremendously the always latent fear and hatred of informers at the Center. An awareness that informers, termed *"inu"* by the evacuees,[30] might be present to report antiadministration utterances or acts was manifested as early as August 1942 (T&N, 42). Suspicion of *inu* redoubled when the residents observed the leaders of the opposition or "status quo" groups being thrown into the stockade (Ibid., 262), and received factual confirmation when the administration on or about February 1, 1944, began the use of

[30] The brand "inu" (literally, dogs) dates back to a period long before the War and was linked with the code of the Japanese immigrants which forbade divulging detrimental information outside the racial group (T&N, 20–21).

hired evacuees "fielders" to report the presence of "agitation" or "general unrest" in various blocks (Ibid., 205). The underground groups, below described, were quick to utilize the generally felt antipathy toward informers for political purposes (Ibid., 225). One rumored to be an *inu* suffered severe social ostracism (Ibid., 225, 264), as well as the danger of physical violence (Ibid., 225), and anyone making proadministration or antiopposition statements was quickly branded *inu* by the latter (Ibid., 225, 291). During June 1944 three persons considered *inu* were attacked and beaten by other evacuees (Ibid., 264–265, 269); and on the night of July 2 occurred the celebrated murder of Hitomi.

Hitomi, referred to in *The Spoilage* under the pseudonym Takeo Noma (see p. 374), was the general manager of the Center's Cooperative Enterprises, an organization which ran evacuee-patronized canteens at Tule Lake. Long regarded by the evacuees as beneficiaries of a vested interest and hence proadministration, the Cooperative's Board of Directors were particularly vulnerable to the charge of being *inu,* and Hitomi was frequently referred to as "Public *Inu* Number One" (T&N, 271). While the cause of Hitomi's murder has been the subject of some speculation (see R. 127, T&N, 271), its repercussions were widespread. Some 15 men under the stigma of being *inu* were quickly taken into protective custody and three of these, at their own request, were transferred to other relocation projects (R. 49, T&N, 276). The Coop's Board of Directors resigned in a body (R. 49, T&N, 273). The evacuee internal security or police force, long uncomfortable because ostensible agents of the administration, also resigned (R. 49, T&N, 277–278). Only with difficulty was the administration able to restaff the police force with evacuees henceforth termed "wardens" (T&N, 281). It was tacitly, and indeed to some extent explicitly, understood that these wardens should act only as peace officers and that "problems arising between the administration and the residents do not come within the jurisdiction of the force" (T&N, 281; R. 49).

Concomitantly with the abandonment of repressive measures, the replacement of the evacuee police force with an organization of wardens, the discrediting and flight of certain

proadministration figures, and the failure to apprehend the evacuees responsible for the *inu* assaults, there occurred an emergence into the open of Japanese nationalist organizations whose activities had theretofore been carried on secretly. In the early development of these organizations emphasis was centered on a plan for the "resegregation" of evacuees at Tule Lake which entailed a further division of the residents into two camps—those "truly disloyal" and those whose loyalties were uncertain or pro-American (T&N, 229–231). In March 1944 a letter addressed to the Attorney General which was ultimately channeled to the administrative officers at Tule Lake sought permission to circulate a petition for the signatures of those residents who desired repatriation or expatriation to Japan and who, in the meantime, wished to be separated from those in the Center who did not so desire (T&N, 230–231). The administration gave somewhat equivocal sanction to this movement on April 7, 1944 (Ibid., 231), only to withdraw its permission entirely on April 10 with the statement that it had no intention of allowing resegregation (Ibid., 233–234). In the meantime the petition had circulated and some 6,500 signatures, including those of minors, had been obtained (Ibid., 233). On April 24, and again on May 30, leaders of the resegregation movement sought to enlist the aid of the Spanish Consul at San Francisco in achieving these aims (Ibid., 234–235).[31]

On December 13, 1943, the Spanish Consul, then investigating the causes for the declaration of martial law at Tule Lake, had met with partisans of the "status quo" and had been asked by them that "truly disloyal Nisei" be given the status of Japanese nationals so that they might come within the jurisdiction of the protecting Spanish authorities (T&N, 309). Upon the enactment on July 1, 1944 of the renunciation statute, the resegregationists made renunciation a focal point of their policies, but continued in the meantime to press for resegregation (Ibid., 308–311). By this time the movement had become well organized; representatives had been appointed in every block and had been coordinated under ward

[31] The government of Spain took over the protection of the interests of Japan during the war.

representatives, who in turn formed a central committee (Ibid., 307). "Educational lectures" given by the leaders placed stress on the certainty of a Japanese victory in the Pacific and expounded Japanese political ideologies (Ibid., 308). On August 12, the first open meeting of a resegregationist organization, the *Sokoku Kenkuyu Seinen Dan,*[32] occurred. Propitiatory only in its expressed desire to avoid "center politics" and any infractions of project regulations, the Sokoku was otherwise devoted to nationalistic aims (Ibid., 311–312). Its program embraced Emperor worship, the glorification of Japanese war aims, and entailed outdoor exercises of a militaristic nature for its members, who wore uniform costumes featuring the emblem of the Rising Sun (Ibid., 312–313). A central office, similarly embellished, was established in Block 54, where anyone speaking English was fined. Daily ritualistic exercises culminated on the 8th of each month with the holding of ceremonies at which prayers for a Japanese victory were offered (Id., 320).[33]

A parallel organization to the *Sokoku,* the *Sokuji Kikoku Hoshi Dan* (Organization to Return Immediately to the Homeland to Serve), was established in November, 1944, for older resegregationists. Membership was limited to those who had signed the resegregation petition (see *supra,* p. 21), who wished an immediate return to Japan, and who had pledged absolute loyalty to Japan and a willingness "to sacrifice life and property in order to serve our mother country in time of unparalleled emergency" (T&N, 322). Female relatives of the *Hoshi Dan* and the *Hokoku,* the latter a successor organization to the *Sokoku,*[34] became members of an organization commonly known as the *Joshi Dan* (Ibid., 325).

Thomas and Nishimoto state that in late 1944, the resegregationist organizations claimed as members about 32 percent

[32] Literally, Young Men's Association for the Study of the Mother Country.

[33] In Japan, the date of the Pearl Harbor attack was December 8, 1941.

[34] The change apparently was one of name only and was explained by resegregationists as having been adopted to signify that the period of cultural preparation for the young men had been completed and that they were now ready for service to the Japanese government. *Hokoku Seinen-Dan* may be translated as "Young Men's Organization to Serve Our Mother Country" (T&N, 322–323).

of the Tule Lake population over 17½ years old (T&N, 328). It is not entirely clear whether this percentage figure represents the proportion that the members of the exclusively male *Hokoku Seinen-Dan* and *Hoshi Dan* bore to the entire Tule Lake population over 17½ or whether members of the *Joshi Dan* (Young Women's Organization) are also included. In any event, the dichotomy between transferees and Old Tuleans is again evident. Whereas 45 percent of all transferees were resegregationist members, only slightly over 8 percent of the Old Tuleans participated in the resegregationist movement (Ibid.).

The Renunciation Period.—The enactment of the renunciation statute on July 1, 1944, was reported in the Center newspaper on July 13 (T&N, 310) and numerous requests for permission to renounce began to come into the Department of Justice in the latter part of that month (R. 106). As previously stated, the resegregationists immediately made renunciation a focal point in their policies (T&N, 310). Japanese short-wave propaganda concerning alleged naval victories was spread and discussed throughout the Center (T&N, 325). Rumors developed to the effect that those who did not renounce their citizenship (1) would be drafted into the Army; (2) would be ineligible for expatriation to Japan and could not, therefore, accompany their repatriating parents; and (3) would be forced to leave the Tule Lake Center and resettle (T&N, 326). One leader argued, in effect, that renunciation involved no risk because the statute was unconstitutional and evacuees could not be held responsible for their actions in view of the general conditions in the Center (Ibid.).

The procedures set up by the Department of Justice for renunciation were announced to the Center through its newspaper on October 26, 1944 (T&N, 323). These procedures were prescribed by the Attorney General's Regulations set forth in Appendix B, *infra.* The appellee, Shimizu, requested an application form on December 1 (R. 193). On December 6, a representative of the Department of Justice arrived at Tule Lake to open hearings for renunciation and took up first the applications to renounce which had been made by the resegregationist leaders (R. 107–110; T&N, 332). On December 15,

intracenter opposition to the resegregationists culminated in a brief scuffle between a representative of each faction, one wielding a stick and the other a mop (R. 85). The defeat of the resegregationist champion greatly weakened the prestige and position of that organization (T&N, 329–332). While hundreds of requests for renunciation forms were made prior to December 26, 1944 (R. 106), the vast majority of them were not received by the Department of Justice until on and after that date.

On December 17, 1944, the Western Defense Command announced that effective as of January 2, 1945, the original exclusion orders, whereby persons of Japanese ancestry had been forbidden residence on the West Coast, would be rescinded (T&N, 333). On December 18, the Supreme Court handed down its decisions in the *Korematsu* and *Endo* cases.[35] On the same day came announcement of the decision of the WRA to force resettlements by liquidation of relocation centers within a year.[36] As an aspect of these radically revised plans, the Army, on December 19, announced a reprocessing of the residents of the Tule Lake center to determine which individuals would be eligible for clearance and which would be detained under exclusion orders (T&N, 333–334).

On Tuesday, December 26, 1944, approximately two thousand pieces of mail were received in the Department of Justice from Tule Lake, indicating a desire to renounce citizenship (R. 112). Appellee, *Sumi,* requested an application form at about this time (R. 148). On December 27, 1944, seventy *Seinen-Dan* and *Hoshi-Dan* leaders, most of whom were renunciants,

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[35] In *Korematsu* v. *United States*, 323 U. S. 214, the Court upheld the constitutionality of the exclusion orders. In *Ex parte Endo*, 323 U. S. 283, it struck down the WRA leave clearance procedures as applied to an admittedly loyal citizen of the United States. The questions of whether or when these Court decisions may have come to the attention of the segregees and what effect they may have had upon their decisions to renounce, are not touched upon in the present record. However, it is clear that citizen evacuees at all times had access to newspapers, magazines and radios, including some short-wave sets. See, e. g., R. 141, 239, 241, 321; T&N, 98, 325. Cf. Dembitz, *op. cit. supra*, note 25, at p. 221.

[36] *The Spoilage* (T&N, 333) incorrectly gives the date of the WRA announcement as December 17, 1944. See Annual Report of the Secretary of the Interior for the fiscal year ended June 30, 1945, pp. XXXVIII, 275.

were removed from Tule Lake for confinement at Santa Fe, New Mexico, "as undesirable alien enemies" (T&N, 339). The *Seinen-Dan,* which immediately elected new officers to replace those interned (T&N, 340), intensified its nationalistic activities and issued copious propaganda literature exhorting the residents to become "true Japanese" through renunciation, pointing out that the organization's aim of resegregation for which it had been striving so long was at last about to be achieved (Ibid., Cf. R. 119–120). Appellee, *Shimizu,* who had requested her application form on December 1, 1944, and whose husband, as an active pro-Japanese leader (R. 8), had been removed to Santa Fe (R. 197), received her renunciation hearing and executed her renunciation form on January 16, 1945 (R. 196–198).

On January 24, the Department of Justice published an open letter to the Chairman of *Hoshi-Dan* and *Hokoku Seinen-Dan* condemning the activities of the organizations and ordering them to cease (T&N, 356). On January 26, 1945, the second group of organization officers was removed to the alien enemy internment camps (R. 121). In all, 171 men were removed for internment as alien enemies on this date (T&N, 356). On January 29, WRA gave assurances that "those who do not wish to leave the Center at this time are not required to do so and may continue to live here or at some similar center until January 1, 1946" (R. 79, 137; T&N 356). Appellee, *Sumi,* formally renounced her citizenship on February 1, 1945 (R. 151–154).

On February 11, 1945, another contingent of about 650 organization members of *Hokoku Seinen-Dan* and *Hoshi-Dan* were served with internment notices and removed (R. 122; T&N, 357). Appellee *Murakami* requested an application form on February 12, 1945 (R. 158). On March 4, the Department of Justice arrested and interned a fourth contingent of 125 men (T&N, 357). Although additional persons deemed undesirable by WRA were thereafter interned at the request of that agency, this group was the last of those considered by the Department of Justice to be troublemakers (R. 129). On March 14, 1945, appellee *Murakami* executed her formal renunciation (R. 161–164).

Seven out of every ten citizen evacuees at Tule Lake renounced their United States citizenship. An analysis of these renunciants shows that males predominated, for 77 percent of all male citizens were renunciants as compared to 59 percent of all females. It also demonstrates a predominance of transferees among the renunciants; 78 percent of such residents became renunciants as compared with 49 percent of the Old Tuleans (T&N, 359).

The renunciations of the three appellees who were resident at Tule Lake were approved by the Attorney General "as not contrary to the interests of national defense" on May 3, 1945 (R. 154, 164, 199). Commencing in June 1945 the Department of Justice began to receive a number of requests to withdraw renunciations previously approved, but the vast majority of such requests were not received until after the formal acceptance by Japan of the terms of surrender on August 14, 1945 (R. 129–130).[37] *Sumi, Murakami* and *Shimizu,* respectively, made such requests on August 30, November 5, and December 3, 1945 (R. 155, 165, 201).

III. Proceedings below

Upon the basis of the stipulation between the parties (*supra,* pp. 8–9) and upon a record consisting of the various affidavits filed in connection with the respective motions for summary judgment, the district court in No. 11839 rendered an opinion on September 5, 1947 (R. 331–339),[38] and on September 18, 1947, filed findings of fact (R. 341–367) and conclusions of law (R. 367–368). The judgment of the district court in No. 11839 declaring the appellees' renunciations null and void and restoring them to the rights of American citizenship was entered September 18, 1947 (R. 369–370).

[37] According to the New York Times of Tuesday, August 14, 1945, p. 1, the announcement was first made by the official Japanese news agency early that morning. The next two days were proclaimed holidays by the President. VJ-day was proclaimed on September 2, 1945, upon the signing of the formal surrender agreement. However, it has been suggested that as late as October 1945, some segregees continued to believe that Japan was winning the war (R. 141; Cf. T&N, 308, 325).

[38] This decision is officially reported at 73 F. Supp. 1000.

No opinion was rendered by the district court in No. 22082. The court entered findings of fact and conclusions of law, which are identical with those filed in No. 11839 except as to jurisdiction and, of course, Yuichi Inouye,[39] on August 27, 1948 (M. R. ——). The judgment of the court also voiding the appellee's renunciations and restoring them to their rights of citizenship, and further ordering the Secretary of State to treat them as citizens of the United States, was entered on the same day (M. R. ——).

SPECIFICATION OF ERRORS RELIED UPON

In No. 11839, the district court erred:

(1) In holding that it had jurisdiction under the provisions of Section 503 of the Nationality Act of 1940 (8 U. S. C. 903).

(2) In holding that it had jurisdiction under the provisions of Section 274 (d) of the Judicial Code, as amended (now 28 U. S. C. §§ 2201, 2202), in invoking *sua sponte*, the provisions of that statute in aid of its jurisdiction, and in issuing a declaratory judgment on the basis thereof.

(3) In failing to dismiss the proceedings for want of jurisdiction.

(4) In finding and concluding that the renunciations of United States citizenship heretofore executed by the appellees, Murakami, Sumi, and Shimizu were involuntary and were the result "of mental fear, intimidation, and coercions depriving them of the free exercise of their will."

(5) In declaring said renunciations to be null and void and cancelled, and in restoring said appellees to the rights of the United States citizenships.

(6) In failing to hold that said renunciations were voluntary and binding and that said appellees had not proven otherwise.

(7) In finding that the renunciation of the appellee Inouye was the result of undue influence and parental coercion.

(8) In holding that the renunciation of Inouye is void and of no force or effect because said renunciation was executed when Inouye was 18 years of age.

[39] As before stated, Inouye is not a party to the proceedings in No. 22082.

(9) In declaring the renunciation of said Inouye to be null and void and cancelled, and in restoring Inouye to the rights of United States citizenship.

(10) In failing to hold that the renunciation of Inouye was a voluntary act and in failing to hold that the renunciation of one 18 years of age under the provisions of Section 401 (i) of the Nationality Act of 1940, as amended (8 U. S. C. 801 (i)) was valid and effectual to cause a loss of United States nationality.

* * * * *

In No. 12082, the district court erred:

(1) In finding and concluding that the renunciations of United States citizenship heretofore executed by the appellees Murakami, Sumi, and Shimizu were involuntary and were the result of mental fear, intimidation, and coercions depriving them of the free exercise of their will.

(2) In declaring said renunciations to be null and void and cancelled, in restoring said appellees to the rights of United States citizenship, and in further ordering the appellant, as Secretary of State, to recognize and treat said appellees as citizens of the United States.

(3) In failing to hold that said renunciations were voluntary and binding and that said appellees had not proven otherwise.

SUMMARY OF ARGUMENT

I. A judicial inquiry into the matter of an individual's United States nationality is sanctioned under Section 503 of the Nationality Act of 1940 when, and only when, the individual is claiming a right or privilege by virtue of such nationality and an agency or department of the Government is denying the claim on the ground that he is not a United States national. The proceedings in Nos. 11839 and 12082 were both brought under Section 503. The dispute in No. 12082 arises by reason of the refusals, following requests, of the State Department to issue passports to the three appellees therein. Since these refusals were made on the ground that such appellees were not United States nationals by reason of their prior renunciations of citizenship under Section 401 (i) of the Nationality Act, a dispute exists within the contemplation of Section 503, and the court below properly assumed jurisdiction of that case.

In No. 11839, however, the operative facts requisite to an exercise of jurisdiction under Section 503 are lacking. The record therein fails to demonstrate that the four appellees thereto have sought to obtain from the respondents any right or privilege which might be afforded them as nationals of the United States, and plainly neither respondent is denying them such rights or privileges. With respect to the Attorney General (since Section 503 permits suit only against the "head of the department" the appellant Carmichael, a subordinate of the Attorney General, was improperly joined), it is submitted that his prior action in approving appellees' renunciations constituted a recognition, not a denial, of a right of citizenship, that he lacks authority to rescind such renunciations, and that in the absence of any outstanding denial of such a right or privilege at the time suit was commenced or presently, the suit in No. 11839 is not within the terms of Section 503.

For similar reasons, a judgment under the Federal Declaratory Act (invoked, *sua sponte,* by the court below) is improper. As above demonstrated, no case or controversy in the constitutional sense exists between the parties, and the Declaratory Judgment Act did not expand the judicial power beyond the scope of that requirement. Moreover, since the court below

did not acquire jurisdiction under Section 503, it lacked authority to proceed against the Attorney General in his official capacity under a different statute.

II. This court, we submit, may and should give only slight weight to the findings and conclusions below that the renunciations of the three appellees common to both appeals were the result of "mental fear, intimidation and coercion." E. g. *Stork Restaurant* v. *Sahati,* 166 F. (2d) 348 (C. C. A. 9). Examination of the record demonstrates that such a conclusion is supported neither by clear and convincing, nor even by a preponderance of, evidence in any of these cases. The process of renunciation, designedly made cumbersome for the precise purpose of preventing hasty or coerced action, was carried through by these renunciants; and despite the fact that several months thereafter intervened before the Japanese capitulation the appellees did not seek to avoid the consequences of their actions until that event made it advantageous for them to do so. Examination, moreover, of the appellees' contemporaneous statements at the time of renunciation, wholly unrefuted and unexplained by them in this record, demonstrate that their decisions to renounce were voluntary. As against such evidences of motivation, there are in this record only the appellees' own affidavits from which a contrary conclusion might be drawn. It is plain, however, that the "law * * * assumes the freedom of the will as a working hypothesis" (*Steward Machine Co.* v. *Davis,* 301 U. S. 548, 589) and that one seeking to overcome this hypothesis must carry the burden of proof. E. g. *Hartsville Mill* v. *United States,* 271 U. S. 43. Appellees' affidavits, we submit, fail to do so when considered in conjunction with the evidence above summarized.

In the main these affidavits refer in conclusory fashion to conditions prevailing at Tule Lake during the renunciation period. The alleged existence of such conditions, of course, does not preclude a conclusion that many or all of the Tule Lake renunciants voluntarily desired to renounce, and without specific application to the cases of these appellees, reliance upon such conditions is manifestly indecisive. *Hartsville Mill* v. *United States,* supra. Examination of the entire record, moreover, leads as well to the inference that those of the Tule Lake

residents who did renounce (30 percent of those eligible to renounce did not do so) were predisposed toward renunciation as to a conclusion that any substantial number of them lacked freedom of choice in the matter. Furthermore, there is no acceptable evidence that violence was exerted during the renunciation period against any resident to force him to renounce or in consequence of his failure to renounce. Finally, it is suggested that one in fear of possible violence should he remain loyal to the United States would, unless pursuaded by mere considerations of convenience, have sought transfer from Tule Lake rather than abjuring and renouncing "all allegiance to the United States of America."

III. The appellee Inouye, a party only in No. 11839 and consequently subject to the jurisdictional infirmities of that proceeding, has made no effort to prove that his renunciation was involuntary and accordingly the conclusion of the court below to that effect is unsupported. There is presented as to Inouye, however, the further question of whether the renunciation statute authorized such action on the part of an individual 18 years of age.

The renunciation statute was added by amendment to the Nationality Act of 1940. In enacting that Act the Congress as a matter of general policy reduced the age of competence for actions in respect of matters of citizenship from the common law age of 21 years to the age of 18 years. We submit for reasons hereinbelow detailed that the Attorney General, whose decision in such a matter carries a strong presumption of correctness for the reason that he participated in the drafting of the renunciation statute, properly acted in approving the renunciation of one 18 years of age and that such a renunciation is binding.

IV. Most of appellees' objections to constitutionality have no application to this case since the statute provided for voluntary, unilateral action on the part of renunciants. The contention that a natural-born citizen may not renounce is contrary to the authorities. The Congress considered carefully the constitutionality of the statute and passed it with knowledge of the evacuation and relocation programs. We submit that its constitutionality is not subject to serious question.

ARGUMENT

I. The issue of jurisdiction in No. 11839

What is here said with respect to the power of the Court to entertain the proceeding in No. 11839 will have practical effect only in the case of Albert Yuichi Inouye, for he alone among the four appellees in No. 11839 is not also an appellee in No. 12082. In the latter case the action was brought on behalf of Murakami, Sumi, and Shimizu (also plaintiff-appellees in No. 11839) against the Secretary of State whose subordinates have admittedly denied their applications for passports on the grounds that they are no longer United States nationals or citizens by reason of their prior renunciations under the renunciation statute (M. R. ——). The jurisdiction of the court below in No. 12082 is therefore apparent under the provisions of Section 503 of the Nationality Act of 1940 (8 U. S. C. § 903), supra, p. 2, for the Department of State, of which the Secretary is the head, has thus denied to each of the three appellees a claimed "right or privilege as a national of the United States * * * upon the ground that he [she] is not a national of the United States * * *."

But while jurisdiction is conceded in No. 12082, no such concession is possible in No. 11839. That action was commenced against the Attorney General and a subordinate official of the Immigration and Naturalization Service of the Department of Justice. Paragraph IV of the amended complaint therein invoked, as did the complaint in No. 12082, the jurisdiction of the court on the basis of Section 503. The record in No. 11839, however, is wholly barren of any showing that the Attorney General or other official of the Department of Justice is, or was at the time of the commencement of that action, denying the plaintiffs therein any right or privilege as nationals of the United States.

Despite this fact the district court in No. 11839 concluded not only that it had jurisdiction on the ground alleged, i. e., section 503, but further that issuance of its judgment was authorized by the Federal Declaratory Judgment Act, Section 274, of the Judicial Code (28 U. S. C. 2201, 2202, formerly 28 U. S. C. 400). Clearly, neither statute warrants an exercise of the judicial power in the absence of some showing in No. 11839

that a justiciable controversy between the Attorney General and the appellees therein exists. See, e. g., *Federation of Labor* v. *McAdory*, 325 U. S. 450, 461. We submit that none does exist.

1. As becomes apparent from a mere reading of Section 503, a cause of action thereunder arises only when an individual "claims a right or privilege as a national of the United States [and] is denied such right or privilege by any Department or agency, or executive official thereof, upon the ground that he is not a national of the United States." In the instant case the Attorney General, acting pursuant to the mandate of the renunciation statute and long prior to the institution of the present action, approved as not contrary to the interests of national defense the renunciations of United States citizenship duly executed by the appellees. Thereafter, each was interned as an alien enemy by orders of the Attorney General issued in the latter part of 1945 and each was ordered released from such confinement early in 1946.[40] Insofar as the record shows, however, this temporary internment under the provisions of the Alien Enemy Act of 1798 [41] generated no assertions by the appellees that their rights as alleged United States nationals were being denied. In any event any potentiality of controversy due to such internment disappeared upon their release long before the institution of this action and, indeed, if there had been an actual controversy, it would have become moot even if suit had been brought prior to such release. *Mills* v. *Green*, 159 U. S. 651. Neither the Attorney General nor any other official of the Department of Justice has taken any further action with respect to these appellees, and, we, submit, in the period since their releases they cannot point to any denial of a right or privilege by an official of the Department of Justice which might be asserted by a national of the

[40] *Murakami*, *Sumi*, and *Shimizu* were each ordered interned on August 31, 1945; they were ordered released on various dates all falling in February 1946 (R. 157, 168, 205). Inouye was ordered interned on November 29, 1945, and was released by order dated March 27, 1946 (R. 193).

[41] 50 U. S. C. 21, made operative during World War II by a series of Presidential Proclamations. (See, e. g., Presidential Proclamation #2255 (10 Fed. Reg. 8947).)

United States. Accordingly, we submit that the power to entertain the proceeding in No. 11839 is not to be found in the provisions of Section 503 of the Nationality Act.[42]

Appellees, moreover, cannot seek to justify the assumption of jurisdiction by the court below under this statute on the basis of an implied waiver by the defendants. The issue was at least inferentially posed by the pleadings. In answer to that paragraph of the complaint alleging "jurisdiction herein by virtue of Title 8, United States Code, Section 903," paragraph IV of the answer stated that the defendants: "Neither admit nor deny the conclusion of law comprising Paragraph IV of the said complaint, regarding the question of jurisdiction as a matter to be determined by the Court" (R. 17–18).[43] Moreover, the absence in the answer of a specific denial of the jurisdictional allegation of the complaint is immaterial. It was the duty of the court

[42] The requisite denial of a claimed right cannot, of course, be found in the action of the Attorney General, taken long prior to the institution of suit, in approving appellees' renunciations. Consideration thereof by the Attorney General was a duty placed upon him by the renunciation statute and a refusal by him to act might of itself have constituted a denial of the rights therein conferred upon United States citizens to execute wartime renunciations of citizenship. Similarly a denial by the Attorney General of a request to rescind such a renunciation would not constitute a denial based upon the ground that the applicant was not a citizen or national of the United States since no authority is vested in the Attorney General to make such rescission.

[43] It is to be noted that par. III of the amended complaint alleges, *inter alia*, that, "the defendants deny that plaintiffs are nationals of the United States and have denied the plaintiffs rights and privileges as nationals of the United States * * *" (R. 3) and that in par. III of the answer (R. 17) this allegation would seem to have been admitted. In view, however, of the content of par. IV of the answer immediately following, this admission, if it be deemed relevant to the issue of jurisdiction, would appear to have been inadvertent. Moreover, since the allegation of the complaint is in the past tense, the admission may be taken as accurate in view of the fact previously referred to that appellees had been subject to brief internment as alien enemies, without, however, implying that jurisdiction existed at the time the action was commenced. In any event, it is axiomatic that jurisdiction of the subject matter may not be conferred by consent of the parties. E. g. *Gainesville* v. *Brown Crummer Inv. Co.*, 277 U. S. 54, 59; *Woolsey* v. *Security Trust Co.*, 74 F. (2d) 334, 335 (C. C. A. 5). This would seem especially to be true where, as here, suits against public officers in their official capacities, must satisfy the terms of Congressional consent. *Stanley* v. *Schwalby* 162 U. S. 255, 270; *Becker v. Cummings*, 296 U. S. 74, 78. Cf. *Minnesota* v. *United States*, 305 U. S. 382, 388–389.

below, just as it is now incumbent upon this Court, to determine the existence of jurisdiction. As stated by this Court in *Southern Pacific Co.* v. *McAdoo,* 82 F. (2d) 121, at 121:

> The question we have to decide is whether the District Court had jurisdiction of this proceeding. Though not raised by the parties, this question is necessarily before us and must be decided. *Mitchell* v. *Maurer,* 293 U. S. 237, 244, 55 S. Ct. 162, 79 L. Ed. 338.

This Court has also held that an issue as to the jurisdiction of the trial court is not waived by failure to raise the issue at that stage, if it is subsequently raised on appeal. *The Taigen Maru,* 73 F. (2d) 922.

For the reasons hereinabove stated, we submit that the court below erred in concluding that it had jurisdiction by virtue of Section 503 and that this Court, if satisfied that jurisdiction was not conferred under the Declaratory Judgment Act, should reverse the judgment and dismiss the proceedings in No. 11839.[44]

2. The foregoing considerations underline the absence in No. 11839 of an "actual controversy" requisite to the granting of relief under the Declaratory Judgment Act. Accordingly, we submit that the court below, which *sua sponte* invoked that Act in aid of its jurisdiction, erred in so doing.

The essence of what has occurred in No. 11839 is that the appellees therein have asserted that they are United States citizens and by bringing their suit have challenged the Attorney General to deny their assertions. (Cf. *F. W. Maurer & Sons Co.* v. *Andrews,* 30 F. Supp. 637 (E. D. Pa.)) No action is being

[44] Section 503 by its terms permits the institution of an action thereunder against the "head of * * * [the] department or agency" which is denying the claimed right or privilege. Thus even if the court below were correct in its assumption of jurisdiction on the basis of this statute, it would appear that its judgment should have been entered only against the Attorney General and that William A. Carmichael should have been dismissed as a party defendant. Carmichael, the substituted successor to Albert Del Guercio (R. 340), is a subordinate official of the Immigration and Naturalization Service and is thus a functionary of the Department of Justice. See 8 U. S. C. 100 whereby that Service "is created and established in the Department of Justice." Moreover, Carmichael, as is apparent from his title, is subordinate to the Commissioner of Immigration and Naturalization who is himself "an officer of the Department of Justice" who performs "all his duties under the direction of the Attorney General." 8 U. S. C. 101.

taken by the Attorney General in deprivation of the appellees' rights; no action is threatened. There are not here, as there were in *Perkins* v. *Elg*, 307 U. S. 325 (in which the issuance of a declaratory judgment concerning an issue of nationality was approved), threats of imminent deportation outstanding (see 307 U. S. at 328). In the circumstances of that case the issuance of the declaratory judgment was in aid of the traditional injunctive powers of a court of equity; here there is no occasion for judicial intervention and in fact none is permitted. The appellees find themselves in the disadvantageous position of having signed formal written renunciations of United States citizenship. Unless such renunciations were invalid, they have thereby lost their former nationality. This however, is not by fiat of the Attorney General but by Act of Congress—8 U. S. C. 801 (i). In short, there is no present controversy between appellees and the Attorney General. Nor, for that matter, has there ever been any controversy between them in respect of the subject matter of this action, since the Attorney General's approval of their renunciations was in compliance with their purported voluntary requests that he do so and since the Congress gave him no power to restore citizenship thus cast off.

The judicial function is the determination of actual controversies between parties (*Federation of Labor* v. *McAdory, supra*), and "claims based merely upon 'assumed potential invasions' of rights are not enough to warrant judicial intervention." *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, 324–325. Here, moreover, it is clear that appellees have no reason to fear a future invasion of their claimed rights by the Attorney General. Cf. *Eccles* v. *Peoples Bank*, 333 U. S. 426, 434–435.

We submit that the Congress approached the limit of its constitutional power in enacting Section 503 of the Nationality Act of 1940, *supra*. (Cf., e. g., *Muskrat* v. *United States*, 219 U. S. 346; *Federation of Labor* v. *McAdory, supra.*) There it is provided that when a *claimed* right or privilege of citizenship *is denied* on grounds of noncitizenship an action can be brought. The emphasized words demonstrate the existence of controversy. But where, as here, there is no denial, jurisdiction exists

neither under Section 503 nor under the Declaratory Judgment Act. Cf. *New Jersey* v. *Sargent,* 269 U. S. 328; *Nashville, C. & St. L. Ry. Co.* v. *Wallace,* 288 U. S. 249; *Coffman* v. *Breeze Corporation, Inc.,* 323 U. S. 316. We so submit.[45]

What has been said with reference to the absence of a justiciable controversy, of course, applies *a fortiori* to appellant Carmichael, as to whom the record is completely barren of any suggestion of controversy. There are, however, further objections to the action of the court below in invoking, *sua sponte,* the Declaratory Judgment Act in aid of its jurisdiction over the Attorney General.

Admittedly Section 503 of the Nationality Act authorizes a district court to entertain a suit against the head of an executive department, in his official capacity, regardless of his district of official or personal residence, provided that the terms of the statute are met. That Section, like Section 9 (a) of the Trading With the Enemy Act (50 U. S. C., App. § 9 (a)), authorizes suit in the district of plaintiff's residence only if the action is within the consent of the statute. See *Becker Co.* v. *Cummings,* 296 U. S. 74, 78; *Cummings* v. *Deutsche Bank,* 300 U. S. 115, 118; Cf. *United States* v. *Sherwood,* 312 U. S. 584, 586. However absent such consent, a Government officer officially residing in the District of Columbia is beyond the reach of the process of courts outside that District. *Butterworth* v. *Hill,* 114 U. S. 128; *Hill* v. *Wallace,* 259 U. S. 44, 49, 72; Cf. *United States* v. *Tacoma Oriental S. S. Co.* (9 Cir.), 86 F. (2d) 363, 367–369. And, obviously, mere acquisition of jurisdiction over an officer in his official capacity pursuant to such a consent does not confer jurisdiction over him for purposes other than those for which the consent was given. *Duisberg* v. *Crowley,* 54 F. Supp. 365, 368 (D., N. J.). Accordingly, even if the court below had properly acquired jurisdiction over the Attorney General in his official capacity within the terms of the consent given by Section 503, he was before the court only

[45] It may be suggested, moreover, that Congress by enacting a special statute—Section 503—carefully defining the circumstances in which a declaration of United States nationality may be obtained, did not contemplate or intend that thereafter resort for this purpose should also be available under the Declaratory Judgment Act. In this connection it should be noted that *Perkins* v. *Elg, supra,* was decided prior to the enactment of the statute.

for the purposes of that section and the court erred in placing reliance upon the Declaratory Judgment Act as conferring any different or greater judicial authority than that given by Section 503. Especially is this so where, as here, there is no Congressional consent to suit against him as an officer, except as it may be found in Section 503, with the consequence that the judgment would have to go against him as a person in order to avoid the implication of an unauthorized suit against the United States. Cf. *Philadelphia Co.* v. *Stimson,* 223 U. S. 605, 619–620. That the case involves no controversy with the Attorney General as a person seems clear.

We submit that since the suit does not come within the consent of Section 503, the pendency of a complaint improperly seeking relief thereunder could give the court below no authority to proceed beyond the jurisdictional question, and certainly none to grant relief under a different statute, the jurisdictional requirements of which had not been satisfied in any respect. Accordingly, we submit, the district court clearly erred in invoking the Declaratory Judgment Act in aid of its jurisdiction.

II. The renunciations of the Tule Lake segregants

We discuss herein *seriatim,* in the chronological order of their renunciations, the cases of Shimizu, Sumi, and Murakami. The issue as to whether the renunciation of Inouye is binding is discussed separately in a following section because (1) Inouye is not an appellee in No. 12082, and his case is therefore subject to being dismissed if, as hereinabove suggested, there is a lack of jurisdiction in No. 11839, and (2) because Inouye was not a segregant and the conglomerate of conditions at Tule Lake upon which the other appellees so largely rely in contending for the cancellation of their renunciations is not applicable. Moreover, as we see it, the validity of Inouye's renunciation turns principally if not entirely upon a question of statutory interpretation, i. e., whether the renunciation of one 18 years old is effective under the statute.

The appellees here discussed are not alone in seeking cancellation of their renunciations. In the consolidated cases of *Abo et al.* v. *Clark et al.,* and *Furuya et al.* v. *Clark et al.,* 77 F. Supp., 806 (N. D., Cal.), approximately 2,300 plaintiff-

renunciants formerly resident at Tule Lake sought rescission of their renunciations on grounds substantially identical with those here urged. Since issuance of the opinion of Goodman, D. J., in those cases, some 2,156 additional persons have been joined in these actions as parties plaintiff. Thus the vast majority of the 5,371 native-born persons of Japanese ancestry who signed renunciations of their American citizenship in 1945 while resident at Tule Lake are represented in the *Abo* and *Furuya* cases.

The decision of the district court in those cases leaves the matter still in abeyance. There the court ruled that factors inherent in the situation at Tule Lake, "singly or in combination, cast the taint of incompetency upon any act of renunciation made under their influence by American citizens interned without Constitutional sanction, as were the plaintiffs." [46] 77 F. Supp. 806 at 808.[47] The court, however, further ruled that the Government might designate such of the plaintiffs as in its opinion "acted freely and voluntarily" in renouncing and that as to such persons further hearings would be held. As to those not thus designated within specified time limits [48] a decree of cancellation is to be entered. Ibid. at 812.

In the instant proceeding upon the record herein, the district court entered judgment for the appellees. It is important to

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[46] There is no issue in this case concerning the constitutionality of the laws or the validity of the regulations pursuant to which the assembly, relocation, and segregation centers were established and operated. The exclusion order was valid and "any forcible measure must necessarily entail some degree of detention or restraint whatever method of removal is selected." *Korematsu* v. *United States*, 323 U. S. 214, 223. Unlike *Ex parte Endo*, 323 U. S. 283, the present case presents no issue as to the permissible "degree of detention." There is no suggestion that any of the appellees at any time sought or desired leave clearance from any of the centers until, long after their renunciations, they made their applications to depart, which were granted. Indeed, at the time of their renunciations, the *Endo* case had been decided and the leave clearance procedures involved in that case were not in effect.

[47] In so ruling the court placed reliance on its decision in *United States* v. *Kuwabara*, 56 F. Supp. 716, notwithstanding the fact that it seems to have been overruled by this Court in *Takeyuma* v. *United States*, 156 F. 2d 437,

[48] Since extended from the date originally specified because of the joinder of additional plaintiffs.

note, however, that the findings of fact and conclusions of the court below were reached solely upon documentary evidence and without opportunity to hear testimony or to observe the demeanor of witnesses. In such circumstances, where the decision is rendered upon the basis of affidavits, depositions, or the like, it is well established that the courts should give and will give only slight weight to the findings of the district court. *Stork Restaurant* v. *Sahati,* 166 F. (2d) 348 (C. C. A. 9); *Equitable Life Assur. Soc. of the United States* v. *Irelan,* 123 F. (2d) 462, 464 (C. C. A. 9); Cf. *Smith* v. *Royal Ins. Co.,* 125 F. (2d) 222, 224 (C. C. A. 9), cert. den., 316 U. S. 695; *Societe Suisse Pour Valeurs de Metaux* v. *Cummings,* 99 F. (2d) 387, 391 (App. D. C.), cert. den., 306 U. S. 631.

Turning to a consideration of the renunciations here involved, it is to be observed that the process of renunciation was one of considerable duration. Under the Attorney General's regulations establishing the procedures to be followed under the renunciation statute,[49] one seeking to execute a "formal written renunciation" as prescribed by the statute had to take three preliminary steps. First, a request in writing had to be sent to the Attorney General in order to obtain the official printed form for an "Application for Permission to Renounce United States Nationality." Second, the prospective renunciant was required to execute and return this form to the Attorney General. A hearing date was then set and prior to executing a formal renunciation the applicant had to appear before a hearing officer who was empowered to recommend approval or disapproval of the renunciation to the Attorney General. These time-consuming procedures, designedly made cumbersome for the precise purpose of minimizing the possibility of coercion or mistake (R. 107), were carried out by each of the appellees under discussion. *Shimizu,* the earliest renunciant of the three, requested that the printed application form be sent her by letter dated December 1, 1944 (R. 193–194); she executed the form on December 28, 1944 (R. 196); and was afforded her hearing on January 16, 1945 (R. 196–197). The

[49] These regulations appear in 9 Fed. Reg. 12241, and the pertinent parts thereof are set forth in Appendix B, *infra.*

corresponding dates in the case of *Sumi* are—December 29, 1944 (requested printed form, R. 148); January 20, 1945 (executed the form, R. 149–150); and February 1, 1945 (hearing, R. 151–153). Those for *Murakami* are—February 12, 1945 (R. 158); March 1, 1945 (R. 159–160); and March 14, 1945 (R. 161–163).

Thus in two cases slightly over one month, and in the third approximately one and one-half months, elapsed between the times when the appellees first expressed a desire to renounce and the dates upon which the final acts of renunciation were accomplished. There are indications in the record, moreover, that the desires of two of these appellees to renounce extended for even greater lengths of time than appears from the foregoing facts. In her request for the printed "Application for Permission to Renounce" Sumi stated that "I have anxiously waited for this bill [the renunciation statute] to become effective" (R. 148). And even after Shimizu had taken the ultimate step of signing a renunciation of United States nationality on January 16, 1945,[50] this appellee wrote two letters, one on March 1, 1945, to the Attorney General in which she asked speedy approval of her renunciation (R. 199–200) and the second to her hearing officer, Charles Rothstien, on March 16, 1945, in which she expressed her "firm belief and determination" that she and her family "be repatriated to Japan on the next exchange of nationals" (R. 200). Finally, it is to be noted with respect to all three appellees that their renunciations were not approved by the Attorney General until May 3, 1945 (R. 154, 164, 199). At no time prior to this date did any of the appellees seek to avoid the consequences of their acts, nor did they do so until after the unconditional surrender of Japan was announced by the President on August 14, 1945.[51]

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[50] The renunciation form signed by Shimizu contained, as did all others executed pursuant to the renunciation statute, the following statement:

"I hereby renounce my United States Nationality and all its rights and privileges and abjure and renounce all allegiance to the United States of America in accordance with Section 401 (i) of the Nationality Act of 1940 as amended."

[51] This announcement preceded the holding of formal surrender ceremonies in Tokyo Bay on September 2, 1945. See 1946 Britannica Year Book, p. 415.

From the foregoing, it becomes at once obvious that appellees' renunciations were not impulsive acts performed in a temporary state of apprehension or disaffection. Rather, we submit, these circumstances suggest steady perseverance in a preconceived and voluntary course of action. Cf. *Clement* v. *Buckley Mercantile Co.*, 172 Mich. 243, 137 N. W. 657, 661. Even if it were assumed, contrary to what we believe to be the fact, that appellees' initial steps in seeking renunciation were taken out of a desire to give an appearance of conformity with the majority of Tule Lake citizens, ample opportunity for reconsideration and disclosure was certainly afforded. This is particularly true with respect to the hearings accorded the appellees. Such hearings were conducted by officers specifically instructed not only to explore every possibility of coercion but also "to determine whether there was any group which, although voluntarily renouncing, nevertheless was so clearly pro-American and so clearly acting solely out of bitterness that some change in the regulations or in the statute should be considered" (R. 114). If any sign of coercion was detected the hearing officer was not to permit the signing of a renunciation form (ibid.); in cases where the hearing officer believed the applicant to be acting out of resentment he was instructed not to recommend either approval or disapproval but instead to enter such belief in a memorandum of record (R. 113). In these cases the hearing officers took neither of these steps but instead recommended approval of the appellees' renunciations (R. 154, 164, 199; Cf., also, R. 145–146, 146–147, 173).

As previously suggested, moreover, these hearings provided a particularly appropriate opportunity for disaffirming their ostensible desire to renounce if in fact the appellee was not desirous of doing so. At these hearings no person of Japanese descent other than the renunciant was permitted in the hearing room (R. 117). And while the fact that a Tule Lake resident had reached the stage of being summoned for a hearing might have been ascertained by other residents, there is no proof in the record that it was readily discoverable whether or not this hearing had resulted in a report recommending renunciation to the Attorney General or what action, usually occurring after an

interval of many weeks, that official had taken with respect to the individual's renunciation. Instances did occur where individuals who had reached the hearing stage disclaimed, for reasons not known, a desire to renounce thereat (R. 118–119). As before pointed out, however, appellees gave no intimation on the occasion of their hearings, nor did they assert at any time prior to the final Japanese capitulation that their acts of renunciation were other than voluntary. Instead, the appellees made statements at their respective hearings which, we believe, demonstrate that such acts were the result of considered judgment uninfluenced by any factors legally cognizable as coercion and which are wholly unexplained in their affidavits of record. These omissions are the more significant since they had been served with the copies of the transcripts of their hearings set forth in the record in this case prior to the dates upon which they executed such affidavits. We now examine the records of such renunciation hearings and in so doing comment on the affidavits introduced by the appellees purporting to explain the true nature of their acts of renunciation.

Mutsu Shimizu applied for the printed "Application for Permission to Renounce" on December 1, 1944 (R. 193–194); she was accorded a hearing and formally renounced on January 16, 1945 (R. 196–199); her renunciation was approved by the Attorney General on May 3, 1945 (R. 199). Shimizu, having been schooled in Japan between the years 1920–1931 (R. 195), is to be classified as a Kibei, a group notoriously difficult of assimilation (cf. R. 100, 135; Dembitz, op. cit. *supra* note 25, at p. 209). In her affidavit of record (R. 320–321) she asserts, following a recitation with some specificity of a number of conditions allegedly prevailing at Tule Lake during the renunciation period and certain facts pertaining to her own economic and psychological status at that time, that she "would not have renounced but for these conditions and influences which bound her mental processes to the degree that said affiant was not able to realize the gravity of her step in renouncing her citizenship" (R. 321).

Turning, however, to the contemporaneous statements made by Shimizu at the time of her act of renunciation we find that she affirmed to her hearing officer that she had signed the offi-

cial "Application for Permission to Renounce" because of her "own desire [and] without being forced" (R. 197). When asked by the officer why she wished to renounce she replied simply, "I grew up in Japan and I had all of my training there" (ibid.). Shimizu, whose husband, a noncitizen (R. 197), was at that time interned at Santa Fe, New Mexico, was not content, however, to let the matter rest with the execution of her renunciation on January 16, 1945. On March 1, 1945, she wrote the Attorney General a letter (R. 199–200) which can only be construed as a request that he expedite approval of her renunciation, and on March 16, 1945, she wrote a further letter addressed to her hearing officer (R. 200–201) in which she expressed her "firm belief and determination" that she and her family "be repatriated to Japan on the next exchange of nationals." That evidence of acts and statements made subsequent to naturalization is competent to prove the state of mind existing at the time of naturalization is established. *Luria* v. *United States*, 231 U. S. 9. We assume on general principles and on the basis of this authority that the converse is equally true and that Shimizu's statements in the foregoing letters may be used to demonstrate her state of mind at the time of renunciation. When considered in conjunction with the statements actually made at her hearing, we submit that they lead to the conclusion that Shimizu renounced because she desired to return to Japan.

Tsutako Sumi, also a Kibei (R. 152), applied for an official "Application for Permission to Renounce" by letter received at the Department of Justice on December 29, 1944 (R. 148). She was accorded a hearing and renounced on February 1, 1945 (R. 151–154). Her renunciation was approved on May 3, 1945 (R. 154). As in the case of Shimizu, Sumi's affidavit (R. 317–319) makes copious reference to concurrent conditions at Tule Lake. She concludes, however, in a different fashion:

> That as a result of the detention and isolation, and the pressures of pro-Japanese groups upon said affiant's husband to have said husband force said affiant to renounce her citizenship, * * * that said husband finally went against his will with the result in the end of forcing said affiant, against her will, to renounce her

citizenship. Said affiant at no time willingly submitted to the formal act of applying for her renunciation papers (R. 319).

We submit as a matter of law that the statement quoted above, which is the only purported evidence introduced by appellees to explain Sumi's renunciation, would be entirely insufficient even if standing alone to establish the fact of duress or coercion. Even as a matter of pleading a petition or complaint alleging the existence of fraud or coercion must "state distinctly the particular acts of fraud and coercion relied on, specifying by whom and in what manner they were perpetrated, with such definiteness and reasonable certainty that the court might see that, if proved, they would warrant the setting aside of" the act allegedly coerced. *Chamberlain Machine Works* v. *United States,* 270 U. S. 347, 349. A *fortiori* this rule is applicable to the specificity of the evidence adduced. Where, as here, evidence is entirely lacking as to the nature or quality of the allegedly coercive acts performed by Sumi's husband, there is a basic insufficiency warranting dismissal. Cf., also *Bogert* v. *Southern Pacific Co.,* 285 Fed. 46 (E. D., N. Y.) to the effect that an affidavit containing conclusions of law and fact can be used as evidence only in so far as it sets forth definite statements of fact, and *Cornwell* v. *Southern Maryland Trust Co.,* 289 Fed. 939, 941–942, and cases there cited, to the effect that doubtful or ambiguous statements contained in an affidavit will be construed against the affiant on the assumption that the affiant did not dare to use stronger ones.

The entire record of Sumi's renunciation hearing is, we think, illuminating. In addition to stating that she wished to renounce because "I am going back [to Japan] with my husband" (R. 152), she twice reiterated that she favored renunciation because she had to return to Japan for the reason that her aged father was a resident of that country (R. 152, 153). When informed by the hearing officer that: "You can still go back [to Japan] without giving up your citizenship," she replied merely that: "I don't care, I want to go back anyway." (R. 153.) Surely this latter statement is not one arising from an

apprehension of the disastrous consequences which might attend a failure to achieve renunciation, but is one of indifference. We submit that an analysis of these statements, wholly unexplained in her affidavit leads to the conclusion that Sumi renounced because she deemed it advantageous to do so in view of her intended return to Japan.[52]

Miye Mae Murakami, a permanent resident of this country, requested an official application form by letter dated February 12, 1945 (R. 158). She was afforded a hearing and renounced on March 14, 1945 (R. 161–164). Her renunciation was approved May 3, 1945 (R. 164).

Murakami's affidavit of record (R. 314–316) may best be evaluated, we submit, in the light of the statements made by her at her renunciation hearing. The following excerpts are taken from that hearing:

> Q. (By hearing officer.) Why do you want to renounce your citizenship?
>
> A. Because I want to go back to Japan, and I won't need it when I am there.
>
> * * * * *
>
> Q. Your husband is issei?
>
> A. Yes.
>
> Q. Has he petitioned for repatriation?
>
> A. Yes.
>
> * * * * *
>
> Q. Why don't you stay [here]?
>
> A. My husband is going back. He has a mother there. I go where he goes.
>
> Q. Is that the only reason?
>
> A. Yes.

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[52] As previously noted, Sumi, in her original letter requesting an application form, stated that "I have anxiously waited for this [renunciation] bill to become effective" (R. 148). That this evidence of her state of mind preceding the renunciation period is relevant and competent would seem plainly to follow upon the analogies presented by *United States* v. *Holtz*, 54 F. Supp. 63, 71 (N. D., Cal.), and *Schurmann* v. *United States*, 264 Fed. 917, 920 (C. C. A. 9).

Q. You can go to Japan without renouncing your citizenship.

A. That way it is better.

Q. It isn't. There is absolutely no connection between the two.

A. We don't want it when we go there.

Q. Suppose you want to come back?

A. We will just have to stay there, I guess.

* * * * *

Q. Are you loyal to Japan?

A. I think so.

Q. You understand if you give up your citizenship you can't get it back, and if you do that and go to Japan, you can't come back here?

A. Yes (R. 161–163).

We submit that a reading of this evidence relating to Murakami's act of renunciation can lead to but one conclusion—that she renounced because of her desire to return to Japan with her husband and because of her belief that once there her American citizenship would prove a handicap rather than an asset. In stating the latter belief she exhibited no regret at the loss of citizenship—it would merely be an unwanted impediment in Japan—nor did she demonstrate any sense of panic or hysteria such as she now asserts caused her, in part, to renounce.

Murakami's present explanation of that act is by no means clear. Near the outset of her affidavit she alleges that "said affiant renounced her citizenship due to an erroneous and insidious report prevailing throughout the Center that unless an American citizen Japanese renounced his or her citizenship, that said citizen would not be able to join his or her family or spouse when said Japanese subjects were to be repatriated to Japan" (R. 315).

It is to be observed that the foregoing allegation is in legal contemplation one of mistake and not coercion. The former, it would appear clear, presupposes a free exercise of judgment (although based on erroneous premises); the latter, pressure

depriving one of such freedom. Thus, were the allegation that Murakami renounced due to an "erroneous and insidious report prevailing throughout the Center" inherently creditable, an issue might arise as to whether or not Murakami's renunciation should have been set aside on grounds of mistake. This, however, was not the course taken by the courts below—their findings and conclusions (Cf. R. 368, M. R. —) were to the effect that Murakami's renunciation was the result of "mental fear, intimidation, and coercion." Furthermore, the record totally fails to establish by the requisite "plain and convincing evidence beyond reasonable controversy" that Murakami's renunciation was made under a misapprehension. *Union Central Life Insurance Company* v. *Deutser,* 13 F. Supp. 313, 319 (D. Md.) aff'd 81 F. 2d 139 (C. C. A. 4). In fact the strongest evidence in the record that Murakami's alleged belief that she had to renounce in order to accompany her husband on his return to Japan *actually was erroneous* is her hearing officer's statements to her that: "You can go to Japan without renouncing your citizenship," and that: "There is absolutely no connection between" renunciation and a return to Japan (R. 162, see *supra,* p. 47). These statements, it is submitted, should certainly have been sufficient to elicit inquiries from Murakami had she in fact been under the belief that renunciation was a prerequisite to a return to Japan. Furthermore, Murakami's contemporaneous statement as to the reason for desiring renunciation does not inspire confidence in her present claim of mistake. When asked directly by her hearing officer why she wished to renounce she answered not that she wished to return to Japan and therefore desired to renounce, but instead answered: "Because I want to go back to Japan, and I won't need it when I am there" (R. 161).

Turning again to Murakami's affidavit, we find that she further states, following a recitation of Center conditions, that "said affiant realizes that it was such an irrational state of mind, accompanied by several years detention and isolation and insecurity, threats and fears which finally resulted in pressure of the pro-Japanese groups depriving said affiant of her own free

will, and being bound by said pressures to renounce her citizenship, contrary to her best judgment" (R. 316).[53]

These statements, however, if taken, as they were obviously taken by the courts below, as purporting to establish duress or coercion as a ground for rescinding the renunciation, are antithetical to the plea of mistake above-noted. In view of this conflict, we submit that the courts below erred in setting aside Murakami's renunciation on grounds of coercion and duress. As stated in *Prudential Insurance Co.* v. *Fidelity Union Trust Co.*, 128 N. J. Eq. 327, 15 A. 2d 888, 890:

> It is firmly established that mere annoyance and vexation will not constitute duress, and to avoid a contract on such ground it is not sufficient to merely show exertion of pressure by threats, but it must *clearly* appear that the threats employed actually subjugated the mind and will of the person against whom they were directed and were thus the *sole and efficient cause of the action which he took.* [Italics supplied.]

We submit that the record of Murakami's renunciation hearing, as to which she is wholly silent in her affidavit, leads directly to the conclusion that she renounced because she deemed it advantageous to do so in view of her intended return to Japan.

* * * * *

As Mr. Justice Cardozo stated for the Court in *Steward Machine Co.* v. *Davis*, 301 U. S. 548 at 589–590: "* * * to hold that motive or temptation is equivalent to coercion is to plunge the law in endless difficulties. The outcome of such a

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[53] Murakami's reference (R. 315) to the fears engendered for her life "several times" when "rough looking, tough talking men would invade" the women's washroom "and threaten to assault any woman who had not yet renounced their citizenship," does not make it clear whether or not she personally witnessed such invasions, or merely heard that such incidents had occurred. Nor does she say when they occurred with reference to the period between February 12, 1948, when she requested an application form (R. 158) and March 14, 1945, when she actually renounced (R. 163–164). As previously indicated (p. 25, *supra*), the mass removals of organization members from the Tule Lake Center had occurred prior to the later date. (Cf. R. 5–6). Moreover, it is evident from her subsequent statements (R. 165–167), that such occurrences did not seem to her to be of sufficient importance to warrant mention prior to this litigation.

doctrine is the acceptance of a philosophical determinism by which choice becomes impossible. Till now the law has been guided by a robust common sense which assumes the freedom of the will as a working hypothesis in the solution of its problems." Cf. *Gregg Cartage Co.* v. *United States,* 316 U. S. 74, 79–80.[54] It is axiomatic that one seeking to overcome this working hypothesis by a plea of duress bears the burden of proof. *Mason* v. *United States,* 17 Wall. 67, 74; *Savage* v. *United States,* 92 U. S. 382, 387–388; *Hartsville Mill* v. *United States,* 271 U. S. 43. Whether in the ordinary case this burden can be satisfied only by the presentation of "clear and convincing" evidence (Cf. *Bertschinger* v. *Campbell,* 99 Wash. 142, 168 P. 977)[55] as in the kindred pleas of fraud and undue influence (9 Wigmore, *Evidence* (3rd ed.), Sec. 2498, p. 329), or whether a mere "preponderance" is required need not, we believe, be here determined. Here, many months intervened between the appellees' acts of renunciation and the making of their first assertions that such acts were involuntary. In the meantime Japan had capitulated. "Where there has been a delay on the part of the party pleading duress, clear and conclusive evidence will be required to explain the failure to proceed." *Eberstein* v. *Willetts,* 134 Ill. 101, 24 N. E. 967, 969, and cases there cited. Cf. *Sternback* v. *Friedman,* 23 Misc. Rep. 173, 50 N. Y., Supp. 1025. *Black, Rescission and Cancellation* (1916), vol. 1, Sec. 223, p. 589. The appellees, however, have failed, we submit, to approximate even the lesser quantum of proof referred to above.

We submit upon a review of the foregoing evidence, which is the only evidence contained in the record directly relating to

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[54] "How far one by an exercise of free will may determine his general destiny or his course in a particular matter and how far he is the toy of circumstances has been debated through the ages by theologians, philosophers, and scientists. Whatever doubts they have entertained as to the matter, the practical business of government and administration of the law is obliged to proceed on more or less rough and ready judgment based on the assumption that mature and rational persons are in control of their own conduct."

[55] See also *Wilkerson* v. *Bishop,* 47 Tenn. 24, 29–30; *Philadelphia Fixture and Equipment Corp.* v. *Carroll,* 126 Pa. Sup. 454, 191 Atl. 216; *Chatfield* v. *Seattle,* 198 Wash. 179, 88 P. 2d 582; *Black, Rescission and Cancellation* (1916), vol. 2, § 667, p. 1537.

these three appellees, that it is at very least equally as inferable that they renounced for the reason stated by them at their renunciation hearings, as that they were compelled to do so against their true desires. Accordingly, the courts below erred in setting aside and cancelling such renunciations. Even if it can be said that two inconsistent inferences as to the reasons why each renounced may be drawn on the one hand from a reading of the transcripts of their renunciation hearings and on the other from a reading of the appellees' affidavits despite their inherent weaknesses, the result must be the same. *Penn Ry.* Co. v. *Chamberlain,* 288 U. S. 333, 339 and cases there cited; *New York Life Ins. Co.* v. *King,* 93 F. (2d) 347, 353 (C. C. A. 8), and cases cited; *Ligget & Myers Tobacco Co.* v. *DeParcq,* 66 F. (2d) 678, 684 (C. C. A. 8).

As stated in the case last cited: ". . . where proven facts give equal support to each of two inconsistent inferences, judgment must go against the party upon whom rests the burden of sustaining one of the inferences as against the other" 66 F. (2d) 678 at 684. Application of this doctrine in and of itself should, as above suggested, be dispositive. If more be needed, however, we submit that the appellees have failed to achieve even an equivalence of inferences. As against the purported reasons advanced in their affidavits, of necessity open to severe scrutiny because self-serving (Cf. *Dixie Ohio Express Co.* v. *Lowery,* 115 F. (2d) 56 (C. C. A. 5); *Drennin* v. *Heard,* 211 Fed. 335 (C. C. A. 5)) there stand unexplained not only the records of their contemporaneous statements made at the renunciation hearings but also (1) the persistence exhibited by Shimizu after the fact of her renunciation—a persistence which can hardly be explained (nor is there any attempt to explain it) on the ground of coercive pressure since the act of renunciation itself would have been sufficient evidence of her sympathies; (2) the absence in Sumi's affidavit of any description of the nature or quality of the allegedly coercive actions of her husband in forcing her renunciation—an insufficiency of itself warranting dismissal (*supra,* p. 45), and which is to be contrasted with the clarity of the reasons for renouncing advanced by her at her hearing; and (3) the inconsistencies contained in Murakami's own affidavit in which she avers in the same document first that her decision to

renounce was a voluntary one although based on an alleged erroneous impression and second that she was deprived through coercion of the right to exercise her judgment in the matter.

As above stated the only materials introduced by the appellees into the record which purport to deal in any way with the actual states of mind of the appellees themselves at the time of renunciation are their own affidavits. Otherwise such materials, as exemplified by the brief affidavit of Dr. Kunkel (R. 311–313), attempt only to establish the hypothesis that during the renunciation period "the residents in general did not possess mental freedom but on the contrary were subject to circumstances that were inherently coercive in nature" (R. 312).[56] Even if accepted as proved this hypothesis, taken

[56] It is the Government's position that the opinions expressed in the affidavits and exhibits of record should be excluded from consideration as evidence, under the terms of the stipulation of submission on the merits (R. 323), upon the ground that they do not state "factual matter." In any event, in so far as they may suggest inferences from acceptable evidence, they merely recite conceivable factors that might or might not have entered into appellees' decisions to renounce.

The appellees (R. 152, 161, 197), like the majority of adult transferees at Tule Lake (see notes 22–25, p. 15, *supra;* cf. R. 95–96, 140, 258, 261, 264, 309–310, 325) had decided, for whatever reason, to make their future homes in the Orient. It is said that many others were "fence sitters" who wished to conduct themselves in such a manner as to leave open the possibility of expatriation during or after the war (see, e. g., R. 37, 266; cf. T & N, 342.) It has been suggested that there was considerable vacillation between the groups (R. 37) depending largely upon the course of the war (R. 264; cf. T & N, 88.) According to the above-mentioned opinions, the underlying factors and influences that led to many decisions to renounce were as follows:

1. Loyalty to Japan. (R. 135, 221, 251, 261; T & N, 340–341. Cf. 46–47, 53, 54, 57, 66, 81, 265; T & N, 100–102.)

2. Belief that Japan would win the war and that a pro-Japanese record would be advantageous. (R. 141, 264; T & N, 325–326. Cf. R. 36, 95–96, 221; T & N, 98–100.)

3. Assumption that renunciants, who later changed their minds, could escape consequences. (T & N, 326; R. 90; cf. R. 129.)

4. Desire to avoid service in United States armed forces. (R. 70, 84, 90, 115, 138, 233; T & N, 326, 339, 359. Cf. R. 36, 56, 80, 82, 326; T & N, 317).

5. Anger and frustration because of prewar prejudice and discrimination against their race, climaxed by hardships and losses incident to the evacuation program. (R. 88, 223–224; T & N, 349. Cf. R. 36, 292; T & N, 95.)

6. Fear of public hostility and dread of economic hardships incident to relocating outside of centers at some future date. (R. 70, 74, 75, 77, 89–90,

alone, would not suffice to exculpate the appellees. *Hartsville Mill* v. *United States,* 271 U. S. 43, 48. Certainly an ardent *Hokoku Seinen-dan* member could hardly contend that his renunciation should be rescinded merely because he was a resident at Tule Lake during the renunciation period. Equally, we believe, is this true of renunciants who were segregated at Tule Lake because they had made previous applications for repatriation. An expressed desire to return to Japan during a time of total war between that nation and this may well be regarded as tantamount to an expression of willingness to serve in that nation's war effort. These are but examples to demonstrate what the court below itself acknowledged—that irrespective of the alleged existence of "inherently coercive" conditions, "the plaintiffs' [appellees'] rights are to be considered and determined separately and according to the facts pertaining to them" (R. 331–332). Cf. *Hartsville Mill* v. *United States, supra.*

115, 136–137, 140, 226, 296, 298; T & N, 345–350. Cf. R. 36, 37, 233. But, see R. 234.)

7. Desire to remain with members of families who had been or might be interned as dangerous alien enemies and possibly removed or repatriated to Japan. (R. 70, 90, 115, 138–139; T & N, 326, 350–351. Cf. R. 152, 162, 180.)

8. Desire to keep on friendly terms with pro-Japanese acquaintances, neighbors and associates. (R. 81, T & N, 351–352; cf. R. 307–308.)

As indicated, *infra*, pp. 55–57, there is no acceptable evidence that resort was had to violence or threats of violence to induce renunciations. There are, however, sharply conflicting opinions among the affiants as to whether or not fears of physical violence played any substantial part in the decisions to renounce. The opinions range from the belief that such fears were negligible (R. 91, 121, 126–127, 142) to the assumption that earlier acts of violence had controlling influence in many cases (R. 228, 268–269). Also, a number of the affiants speak of the heavy increase of applications for renunciation after December 17, 1944, as "mass hysteria" (e. g., R. 308), "a state bordering on panic" (R. 79), etc. In most of such instances it is impossible to tell whether an affiant has reference to a kind of fanaticism (cf. R. 284), contagious excitement (cf. T & N, 342) or merely the persuasive, scale-tipping, influence of majority opinion (cf. R. 308). In any event, all affidavits make it plain that possible fears of violence and group influence constituted only two factors, among many, which may have led to individual decisions to renounce. Even if taken at face value, they establish no more than a partial catalog of possible motives and reasons for such decisions in particular cases, and fall far short of proving coercion in any case.

Even were the rule otherwise, however, the appellees' suggested premise that the large number of Tule Lake renunciations can only be explained on the basis of surrounding circumstances should be viewed with considerable skepticism. At the outset there is the fact that 30 percent of Tule Lake citizens eligible to renounce, surely not too differently circumstanced, did not do so. Secondly, although the percentage of renunciants at Tule Lake vastly exceeded those at the other relocation centers, it is not to be forgotten that Tule Lake residents in the main were segregees who had displayed previous attitudinal differences from the majority of the West Coast evacuees. The very great majority of all persons who had been designated for segregation at Tule Lake following registration received such designation as a result of either a negative answer to Question 28 (see pp. 12, 14–15, *supra*) or a prior request for repatriation (R. 94). We make no claim that one so acting was *ipso facto* loyal to Japan, although, as previously remarked, an applicant for repatriation must necessarily have contemplated the possibility of being drafted, if not actually volunteering, for service in Japan's war effort.[57] Nevertheless, it should occasion little surprise that this group later displayed a far greater predilection—greater in fact than even the authorities had anticipated—toward renunciation than did nonsegregees.[58] The point may be further elaborated. It will be recalled (see p. 26, *supra*) that 78 percent of the transferees renounced whereas only 49 percent of the Old Tuleans so acted. It is true that the composition of neither of these two groups was entirely uniform. But whereas the transferee group was merely sprinkled with adult individuals who moved to Tule Lake in order to accompany members of their families, a very substantial proportion of Old Tuleans were not true segregants, but had preferred to remain at Tule Lake rather than to move to another center (T&N, 104). In these circumstances it is to

[57] There may be no doubt that those applying for repatriation or expatriation, particularly in the early days of the war before segregation occurred, hoped for an early return to Japan irrespective of whether the war was still in progress. (See R. 96.)

[58] It will be further remembered (see p. 16, *supra*) that about one-half of the adult Tule Lake population were Kibei who had lived and had been educated in Japan during some period of their lives (T&N, 370).

be noted that in every instance, up to and including renunication, where data is available to analyze a division of attitudes following segregation, the transferees were much more preponderantly antiadministration, anti-American and pro-Japanese than were the Old Tuleans. This was true with respect to the early "status quo" issue, it continued markedly to be true with respect to membership in the resegregationist organizations, and it remained true with respect to renunciation. From a bare review of these facts alone, we submit, it is as equally inferable that the mass of Tule Lake renunciants were predisposed towards renunciation and voluntarily renounced as that they were the victims of coercion.

It should be further remarked that by and large the record is barren of any indication that violence or threats of violence occurred during the renunciation period itself. There are repeated references to the murder of Hitomi on July 2, 1944. Plainly, however, that incident happened long prior to the time any issue of renunciation or nonrenunciation could have arisen. Hitomi's murder and the almost concomitant *inu* beatings (see *supra,* p. 20) occurred not because the victims were refusing to renounce but because as alleged informers they represented a threat to persons actively or verbally opposing policies of the Center's administration.[59] That similar acts of

[59] As previously noted (*supra,* p. 20) there has been considerable speculation as to the actual motivation for the murder of Hitomi. Moreover, while much has been made of this murder, it would not appear extraordinary that one homicide and a number of physical assaults should occur in any community of 18,000 population over the course of a year.

It is nowhere suggested in the record that popular dislike for, and sanctioning of violence against supposed informers was peculiar to the segregation center at Tule Lake. As previously noted, the brand *inu* dates back to a period long before the war and was linked with the code of the Japanese immigrants which forbade divulging detrimental information outside the racial group. (T&N, 21.) It seems evident that this code had a bearing on he Government's inability to seek out the disloyal prior to excavation (see, id., 20–21; cf. *Korematsu* v. *United States,* 323 U. S. 214, 218–219), as it did upon WRA's difficulties in apprehending and obtaining convictions of wrongdoers in the centers (see, e. g., R. 49). In November and December 1942, according to a WRA report, the arrest of evacuees suspected of beating supposed informers at the Poston and Manzanar Centers were followed by mass demonstrations for their release. (WRA Quarterly Report, Oct. 1 to Dec. 31, 1942, pp. 31–40.) At Manzanar several hundred men "went to the hospital to demand the surrender of the beaten man, but he

violence were not generally indulged in where the issue was merely an individual's choice not to renounce may readily be inferred from the facts that many persons openly resigned from the resegregationist organizations and that about 1,500 citizen evacuees at Tule Lake chose not to renounce. Yet no instances of violence either against the resigners or the nonrenunciants are on record. Cf. R. 121, 127.[60] And with respect to the Hitomi murder and the *inu* beatings above discussed, none of which directly related to an issue of renunciation, it may certainly be said that such events, having occurred long prior to the renunciation period, cannot be regarded as having had a coercive effect on the renunciants. Cf. *Central Acceptance Corp.* v. *Nash Bluefield Motor Co.*, 104 W. Va. 174, 139 S. E. 654; *Worcester* v. *Eaton*, 13 Mass. 371; *Ellison* v. *Pingree*, 69 Utah 468, 231 Pac. 827, 831.[61] Finally it is to be noted that a major proportion of the membership of the resegregationist organiza-

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had hidden himself so effectively that the searchers left, convinced that he had been removed earlier" (id. pp. 36–37). The crowd demanding release of the prisoner refused to disband even after tear gas had been thrown, and, as a result of an attempt to run an automobile into the machine gun positions, the military police opened fire, killing two evacuees and wounding nine others (id. p. 37). (See and cf. T&N, 45–52; but cf. R. 297.)

[60] No contrary inference may be drawn from the fact that on January 18, 1945, Mr. John Burling, a Department of Justice official, addressed an open letter to the chairman of the Hoshi-dan and Hokoku Seimen-dan stating in part: "I am well aware that your two organizations have put pressure on residents of this center to exert loyalty to Japan, and that in a number of cases physical violence was employed. * * * It is as treasonable to coerce others into asserting loyalty to Japan here as it would be outside. All these activities will stop." (R. 216). This letter is to be viewed in conjunction with the reiterated statements contained in Mr. Burling's affidavit of record (R. 92–144) that no incidents of violence during the renunciation period were reported to him, with the fact that he was extremely concerned over the large number of Tule Lake residents that were seeking renunciation (R. 124), and with the further fact that he and the Department of Justice were exploring every feasible method of eliminating the presence of any possible coercive factors (cf. R. 107, 109–110, 113–114, 117, 121–122, 128).

[61] Statements in two of the affidavits filed on behalf of the appellees (R. 228–230, 289) seem to refer to a knifing of a young segregee, as having had some relationship to the renunciation program. This incident is described in excerpts from a letter (T&N, 353–354) and is said to have occurred in October 1944. Although the letter was purportedly written by a repentant renunciant, it does not even suggest that the knifing was committed for the purpose of coercing renunciation. See, also, T&N, 319.

tions, the obvious potential source of violence, was removed from the scene early in the renunciation period. Officers incumbent at the outset of this period were afforded first opportunity of renouncing and were thereupon removed to an internment camp in New Mexico on December 27, 1944 (R. 119). A second group of officers who had promptly been elected to fill the vacancies thus created was removed on January 26, 1945 (R. 121); 650 members were thereafter removed on February 11, 1945, and an additional 125 departed on March 4, 1945 (R. 122). These steps having been accomplished, it would seem extremely doubtful that the remaining Tule Lake residents could have further been in any great fear of violence, yet those who had not yet been afforded hearings persisted in renouncing (R. 129) and those who had done so took no steps to stay the Attorney General's ultimate approval or to request cancellation until long afterwards.[62]

One further point, applicable specifically to the appellees and generally to many other Tule Lake residents, may be briefly discussed. Were it to be assumed, the foregoing indications to the contrary notwithstanding, that a particular resident during the renunciation period deemed it intolerable to remain at Tule Lake without renouncing, an avenue of escape was still available. WRA regulations governing Tule Lake, while not permitting a grant of seasonal or indefinite leave to a resident for the purpose of performing work outside the relocation projects, did permit the filing of a leave clearance application which, if granted,[63] permitted the applicant to move to another relocation project.[64] See WRA Regulation 110.9, *infra,* Appendix C.

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[62] A relatively small number of applicants to withdraw or cancel were received by the Department of Justice in June 1948 (R. 129); not until considerably after the Japanese surrender did the great rush away from renunciation commence (R. 130).

[63] This privilege was denied as a matter of regulation only to those to whom leave clearances had already been denied. WRA Regulation 110.9, *infra,* Appendix C.

[64] That there were demands by some residents for leave clearance would seem to be established by the fact that the affiant Noyes, following his arrival at Tule Lake on October 6, 1944, was appointed to act "as chairman of the Leave Clearance Board in the conduct of leave clearance hearing for evacuee residents of the Tule Lake Segregation Center who applied for transfer to a relocation center" (R. 214).

Moreover, following the announcement of the lifting of the general exclusion orders on December 17, 1944 (see p. 24, *supra*) it was clear that on and after January 20, 1945, there would be no restriction on the departure of anyone not covered by an individual exclusion order (T&N, 334). That a decision to seek these avenues of escape rather than to renounce might involve hardships may be conceded, but it may likewise be said that any decision involving as one alternative an act of expatriation presumably occurs in a state of crisis and requires a balancing of loyalty against convenience. If, as has been frequently suggested, "the high privilege of citizenship must inspire obligations of allegiance" (*Petition of Peterson,* 33 F. Supp. 615, 616. Cf. *Luria* v. *United States,* 231 U. S. 9; *In re McIntosh,* 12 F. Supp. 177, 178), it appears not unreasonable to suggest that if a convinced loyal in fact felt that he or she could not comfortably remain in Tule Lake without renouncing, he or she would have explored the possibility of obtaining leave clearance. Cf. the dissenting opinion of Circuit Judge O'Connell in *Doreau* v. *Marshall,* —— F. (2d) —— (C. C. A. 3, decided August 23, 1948.)[65]

We submit that this record, upon review, leads directly to the conclusion that the appellees had a choice whether or not to renounce, and that they made that choice of their own accord. The suggestion arises from such a review that the appellees were influenced in making their decisions by the fact that their respective husbands were returning to Japan. But a decision to accompany their husbands did not of itself compel them to take the further step of renouncing, as both Sumi and Murakami were specifically informed at their hearings (R. 153, 162). This is not to say that renunciation was not deemed expedient by those desiring to return to Japan. Compare the statement of Murakami that "it is better" to take the prelim-

[65] The language employed by the majority in the above cited case should also be noted: " * * * the forsaking of American Citizenship, even in a difficult situation, as a matter of expediency, with attempted excuse of such conduct later when crass material considerations suggest that course, is not duress." Somewhat analogous is the so-called "retreat rule" of the criminal law relating to homicides sought to be justified on grounds of self defense. For discussion thereof see, e. g., *Brown* v. *United States,* 256 U.S. 335; Beale, *Homicide in Self Defense* (1903), 3 Col. L. Rev. 526, 531–539.

inary step of renunciation prior to going to Japan (R. 162). In fact the record indicates generally that those segregants who shared in the widespread belief that Japan would ultimately be victorious (T&N, 98–100, R. 141, 264) foresaw substantial advantages in making an early demonstration of partisanship through renunciation whether or not they envisaged a speedy return to Japan (T&N, 326, R. 221).

Whether in fact the appellees themselves shared in this belief either inherently or through legitimate persuasion, whether in fact there is cogent explanation for the statements made at their renunciation hearings, as to which the appellees are wholly silent in this record, whether in fact the seeming omissions or inconsistencies in their affidavits can similarly be explained—these and cognate questions cannot be determined on the record as it now stands. In the light of the imperfections of the present record—imperfections which it would seem could only be remedied by the introduction of further evidence by way of direct testimony and cross-examination—and in view of the importance of the issue involved, the appellants herein would have no objection were this court to reverse and remand to the court below with appropriate instructions along the lines suggested. Cf. *Kennedy* v. *Silas Mason Co.*, 334 U. S. 249; *Eccles* v. *Peoples Bank*, 333 U. S. 426, 434; and compare Mr. Justice Frankfurter's dissent in *Johnson* v. *United States*, 333 U. S. 46 at pp. 50–56. We submit, however, that whether the matter be remanded or not, the decision of the courts below with respect to the renunciations of Shimizu, Sumi, and Murakami should be reversed.

III. The renunciation of Inouye

Inouye was born on May 30, 1927, and was 17 years of age when, on February 21, 1945, he first signified an intention to renounce (R. 175). On March 7, 1945, Inouye submitted an official application for permission to renounce United States nationality (R. 176–178). On July 9, 1945, when he was 18 years of age, Inouye, following a hearing at the Manzanar Relocation Center (R. 178–180), executed his formal renunciation of United States nationality (R. 181–182). The renunciation

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was approved by the Attorney General on August 7, 1945 (R. 182).

The court below in No. 11839 set aside this renunciation on two grounds. It held that Inouye's renunciation was incompetent and void for the reason that Inouye was a minor at the time it was executed (R. 335, 367). It also entered the following finding of fact:

> Albert Yuichi Inouye applied for renunciation of his citizenship when he was seventeen (17) years of age and his renunciation was approved by the Attorney General when he was eighteen (18) years of age, under a combination of circumstances which amounted to undue influence and parental coercion. (R. 365–366.)

The concluding clause of this finding appears to have been taken from a letter (R. 182–185) written by Inouye to the Attorney General on August 23, 1945, following announcement of the Japanese surrender, in which Inouye attempted to disavow his renunciation of July 9, 1945. Therein Inouye alleged that his renunciation was executed "under a combination of circumstances which amounted to undue influence and mistake" (R. 183).[66] Save for the substitution of the words "parental coercion" for "mistake," the finding of the court below is in identical language. Inouye's letter, from which the district court thus appears to have derived its finding, is not, however, even verified. Plainly, it is evidence only of the fact that Inouye attempted to withdraw his prior renunciation and cannot be accepted in lieu of testimony that his renunciation was involuntary. There is not in this record even an affidavit, such as those submitted by the other appellees on their own behalf, purporting to explain the true nature of Inouye's act. We submit that the finding of the court below in No. 11839[67] that

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[66] Inouye, as above stated, executed his renunciation at the Mazanar Relocation Center (R. 182). As far as is shown by the record Inouye was never located at Tule Lake.

[67] As before stated, Inouye is not a party to the proceedings in No. 12082.

Inouye's renunciation was not a voluntary act is supported neither by a preponderance of, nor by any, evidence.[68]

There remains the issue of whether or not the renunciation of one 18 years of age is binding under the provisions of Section 401 (i) of the Nationality Act of 1940, as amended.

Prior to the enactment of that statute there was some conflict of opinion as to whether a person under the age of 21 could expatriate himself by any act of his own. The district court in *Baglivo* v. *Day,* 28 F. (2d) 44 (S. D. N. Y.) held not. To the same effect were dicta in *Ex parte Gilroy,* 257 Fed. 110, 119 (S. D. N. Y.), *McCampbell* v. *McCampbell,* 13 F. Supp. 847, 849 (W. D., Ky.), and *Ex parte Chin King,* 35 Fed. 354, 356 (D. Ore.).[69] *In re Wittus,* 47 F. (2d) 652 (E. D. Mich.), however, constituted a square holding that a woman under 21 years of age lost her citizenship through marriage to an alien under the repatriation statute then in effect. Cf. also *In re Carver,* 142 Fed. 623, 624 (C. C. Maine).

It was equally unsettled until the Supreme Court decision in 1939 in *Perkins* v. *Elg,* 307 U. S. 325, whether a minor born in the United States and hence a citizen thereof lost that citizenship if he was thereafter taken by his parents to a foreign country wherein his parents obtained citizenship through naturalization. Both an administrative ruling (36 Op. Atty. Gen. 535) and a court decision (*United States* v. *Reid,* 73 F. (2d) 153 (C. C. A. 9) had indicated prior to *Perkins* v. *Elg* that such

[68] The findings of "undue influence" and "parental coercion," if meant as separate reasons for setting aside Inouye's renunciation, are equally unsupported. The suggestion of "parental coercion" would seem to have been derived from a statement made by Inouye in connection with an application for his release from internment as an alien enemy that he renounced because his parents had instructed him to do so (R. 192), and from a remark recorded by an officer delegated to afford him a hearing upon his "Application for Non-Repatriation" (R. 186–188) that his was a "clear case of parental influence" (R. 192). The latter statement was entered as a "remark or observation" in a proceeding unconnected with the renunciation procedure and cannot, of course, be considered as an admission, or, for that matter, as the equivalent of an opinion that Inouye was coerced into renouncing. An act done in gratitude or out of affection is not one done under duress. *Mackall* v. *Mackall,* 135 U. S. 167, 172; cf. *Towson* v. *Moore,* 173 U. S. 17.

[69] See also *Ludlam* v. *Ludlam,* 26 N. Y. 356, 376; *State ex rel Phelps* v. *Jackson,* 79 Vt. 504, 514.

a derivative naturalization was binding and exclusive. In *Perkins* v. *Elg*, however, those holdings were overruled, and in the course of that decision the Supreme Court utilized language which may be viewed as supporting the position taken by the district court in *Baglivo* v. *Day, supra.* It said (307 U. S. 325 at 324):

> To cause a loss of (United States) citizenship in the absence of treaty or statute having that effect, there must be voluntary action and such action cannot be attributed to an infant whose removal to another country is beyond his control and who during minority is incapable of a binding choice.

During the year following this decision Congress enacted the present Nationality Act (54 Stat. 1137).[70] Section 401 thereof provided that: "A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by" the performance of any of eight different acts which were set forth in separately lettered subdivisions (a–h, inclusive) thereto. Subsequently two further subdivisions, (i) and (j), were added by amendment. These provisions are collected in 8 U. S. C. 801 (Appendix A, *infra*) and, for convenience, are referred to hereinafter under their Code designations.

Section 403 (b) of the Nationality Act of 1940 (8 U. S. C. 803 (b)) provides as follows:

> No national under eighteen years of age can expatriate himself under subsections (b) to (g), inclusive, of section 401.

Briefly described subsection (b) relates to the taking of a foreign oath of allegiance; subsection (c) to the performance of

[70] The groundwork for this legislation was laid by an interagency committee appointed by the President by Executive Order No. 6115 of April 25, 1933. Pursuant thereto the committee, composed of the Secretaries of State and Labor, and the Attorney General, submitted a proposed codification of the nationality laws of the United States which was transmitted to Congress by the President on June 12, 1938. This proposed code, as subsequently modified and amended by Congress, became the Nationality Act of 1940. *See Codification of the Nationality Laws, House Committee Print,* 76th Cong., 1st Sess.

foreign military service; (d) to the holding of certain positions in the civil service of a foreign state; (e) to voting in a foreign election or plebiscite; (f) to making a formal renunciation of United States nationality while abroad; and (g) to deserting the military or naval service of the United States in time of war. Congress thus provided that the performance of any one of these six out of the eight original acts of expatriation set forth in the Nationality Act of 1940 would cause a loss of nationality provided the performer was not under 18 years of age at the time. No provision concerning age, however, was made by the enacting Congress with respect to obtaining naturalization in a foreign state upon the individual's own initiative (8 U. S. C. 801 (a)) or with respect to a conviction of treason (8 U. S. C. 801 (h)). There is a similar silence with respect to the subsequently enacted subsections (i) and (j).

Although the opinion of the court below in No. 11839 is somewhat confused in respect to the discussion of Sections 801 and 803 (b) (R. 334–335), it would appear that that court believed that the Congressional failure to make specific provision as to the age at which a renunciation under 8 U. S. C. 801 (i)—the subsection here involved—became binding, evidenced an intent to import the common law doctrine that acts of persons under 21 are voidable or void (Cf., e. g., Halsbury, *Laws of England,* Vol. 17, p. 586). We submit that this conclusion is unwarranted.

Prior to a discussion of the legislative history and administrative interpretation of 801 (i) itself, it should be pointed out that the 18 year old minimum with respect to acts of expatriation was made general throughout the Nationality Act of 1940. Not only did Section 803 (b) adopt this minimum with respect to Section 801 (b)–(g) inclusive, but various other sections of that Act dealing with the acquisition of United States citizenship also make it evident that the enacting Congress believed that 18 should be the age at which mature and therefore binding judgments could be made with respect to nationality matters. Thus it was provided in Section 314 of that Act that an individual may become a United States citizen through the naturalization of his parents only if such naturalization takes place while the child is under 18 years of age (8 U. S. C. 714).

Cognate provisions relating to the naturalization of children at the instigation of their natural or adoptive parents, *provided they are under 18 years of age,* are to be found in sections 315 (8 U. S. C. 715) and 316 (8 U. S. C. 716) of the Nationality Act of 1940. And an applicant for naturalization on his own behalf may make a declaration of intention to become a citizen of the United States only "after the applicant has reached the age of eighteen years." Section 331 of the Nationality Act of 1940 (8 U. S. C. 731).

The Congressional purpose that 18 should be the age of discretion in this field, thus clearly shown throughout the statute itself, was specifically stated prior to the enactment of Section 803 (b). This section was proposed and its purpose was described by the Cabinet Committee which drafted the Nationality Code,[71] as follows (*Codification of the Nationality Laws,* House Committee Print, 76th Cong., 1st Sess., p. 69):

> The reasons for adopting this provision are obvious. It does not seem reasonable that an immature person should be able to expatriate himself by any act of his own. With regard to this point see *Ludlam* v. *Ludlam,* 84 Am. Dec. 193, 208; *State of Vermont ex rel Phelps* v. *Jackson,* 79 Vt. 504; *Ex parte Gilroy,* 257 Fed. 110, 121; *U. S. ex rel Baglivo* v. *Day,* 28 F. (2d) 44. It will be observed that in this subsection the age below which a person cannot expatriate himself is set at 18 years, instead of 21 years. *It is believed that a person who has reached the age of 18 years should be able to appreciate fully the seriousness of any act of expatriation on his part.* Moreover, in time of war young men are frequently accepted for military service before they have reached the age of 21 years, and, under the laws of some foreign countries males become liable for the performance of involuntary military service when they reach the age of 18 years. [Italics supplied.]

[71] See footnote 70, *supra.* As below described the section was adopted as proposed save for the substitution of the letter (g) for the letter (h). Section 801 which this section modifies was also adopted substantially as proposed by the administrative committee—the only changes being an addition to the text of subsection (a), the deletion of a proposed subsection (f), and the addition of a new subsection (h).

A condensed version of this statement is also found in the report of the Senate Committee on this same legislation (Sen. Rep. 2150, 76th Cong., 3d Sess., p. 4):

> Expatriation for certain specified acts may occur after a citizen has reached the age of 18 years for the reason that in many foreign countries the duties of citizenship, including that of bearing arms, begin at the age of 18 years.

Referring again to the work of the Cabinet Committee, it is also important to note its comment with respect to what became subsection (f) of Section 801, which provides:

> (f) Making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State;

The explanatory comment of the Cabinet Committee was in part as follows (Codification of the Nationality Code, supra, p. 67, comment on subsection (g)):

> This provision is designed specifically for the use of persons who shall have acquired at birth the nationality of a foreign state, as well as that of the United States, and who, *upon reaching majority,* elect the nationality of a foreign state * * * [Italics supplied.]

Since the 18 year minimum set forth in 803 (b), both as proposed by the Cabinet Committee and as finally enacted, was specifically made applicable to 8 U. S. C. 801 (f) set forth above, an intent to make 18 years the age of majority with respect to the Nationality Act of 1940 becomes again apparent.

It may be argued, since subsections (a) and (h) were not included in 803 (b), that the enacting Congress meant to establish a different age limit with respect to those subsections, and that the failure to include the subsequently enacted subsections (i) and (j) within the purview of 803 (b) is indicative of a similar intent. Even if such a conclusion were to be reached, however, it by no means follows that the age limit applicable to those subsections is 21. No stated reason for the failure of the enacting Congress to include (a) and (h) has

been found in the legislative history of the Nationality Act. We may, however, speculate.

Subsection (a) involves, as does no other subsection of 801, a matter of comity between nations. As stated by the Cabinet Committee (Codification of Nationality Laws, *supra,* p. 66):

> The Government of the United States took the position that such naturalization [of aliens] should be regarded as having terminated their original nationality and allegiance. It necessarily followed that this Government was obligated to recognize the naturalization of citizens of the United States in foreign countries as having the effect of terminating their American nationality and allegiance. This principle has been confirmed in various treaties concluded by the United States with foreign states. * * *

It is thus entirely possible that 801 (a) was deliberately omitted from the scope of 803 (b) in order to permit recognition of naturalizations occurring in countries permitting an acquisition of nationality therein under the age of 18, or to afford complete freedom in the negotiation of treaties with such countries.

There is moreover another, and perhaps equally plausible, explanation for the omission of subsection (a) from the coverage of section 803 (b). Subsection (a) was proposed by the cabinet committee in the following form (Codification of the Nationality Code, *supra,* p. 66):

> (a) Obtaining naturalization in a foreign state, either upon his own application or through the naturalization of a parent having legal custody of such person;

It will be seen that this proposed subsection covered two situations—the obtaining of foreign naturalization by an individual on his own initiative, and the obtaining of naturalization derivitively through the naturalization of a parent. The accompanying explanatory comment of the cabinet committee, written, of course, prior to the decision in *Perkins* v. *Elg,*[72] makes plain its belief, buttressed by the prior ruling of the

[72] The cabinet committee report was submitted in 1938; *Perkins* v. *Elg* was decided in 1939.

Attorney General and the decision in *United States* v. *Reid* (see *supra*, p. 61), that a derivative citizenship obtained through the naturalization of a parent was binding upon an infant, no matter at what age obtained. Thus it might have been deemed inappropriate by the cabinet committee to recommend the inclusion of subsection (a) within the proviso of 803 (b). Moreover, when the enacting Congress amplified 801 (a), apparently in view of *Perkins* v. *Elg*, to provide a right of election to be exercised before attaining the age of 23 years in cases of dual nationality obtained derivitively, a similar desire not to create confusion by the inclusion of subsection (a) within the purview of 803 (b) might have obtained.

Whether or not these speculations as to the reason for this omission are correct—and it is recognized that certain difficulties exist with respect to the second hypothesis advanced—it is nearly impossible to ascribe to Congress an intent to establish a 21-year-age minimum with respect to subsection (a) when the general statutory scheme provided an 18-year minimum. The cabinet committee, which as above noted also excluded subsection 801 (a) from the draft of what became section 803 (b) quoted (at p. 67) with evident approval an opinion of a former Attorney General that: "Naturalization is without doubt the highest * * * evidence of expatriation." 14 Op. Atty. Gen. 295, 297. It may be suggested that other acts of expatriation set forth in Section 801 could conceivably be performed without knowledge of the consequences. This could hardly be said, however, with respect to the necessarily formalistic act of obtaining a foreign naturalization. And it was the consensus of the framers of the legislation that: "It is believed that a person who has reached the age of 18 years should be able to appreciate fully the seriousness of *any* act of expatriation." (See *supra* p. 64.) [Italics supplied.]

Upon the basis of the foregoing it would appear possible that the enacting Congress omitted making reference to 801 (a) in 803 (b) because it conceived that an occasion might arise for recognizing foreign naturalization obtained by persons under the age of 18, or simply because it desired to avoid possible confusion with respect to the dual nationality situation also covered therein, but it would seem incredible that its silence

in this respect indicated an intent to establish a 21 year minimum under which the obtaining of a foreign naturalization should be void.

Subsection (h) of Section 801 providing for a loss of nationality upon a conviction "by a court martial or by a court of competent jurisdiction" of "commiting any act of treason or attempting by force to overthrow or bearing arms against the United States" was added to the proposed nationality code by Senate amendment.[73] Again it would appear that Congress may have had good reason for not setting a specific age minimum in such cases. It is familiar law that an infant who has reached an age of discretion may commit treason just as he may commit other crimes. See 52 *Am. Jur.* sec. 3, p. 796. It will be noted that subsection (h) requires that there be a prior conviction before a loss of nationality occurs. Thus opportunity for raising the defense of infancy in the trial court is accorded. The fact that such a defense would inevitably have to be considered by the trial court removed the necessity of a Congressional presumption of competency such as was made in 803 (b) with respect to the acts of expatriation set forth in subsections (b)–(g). We think it entirely inferable therefore that Congress proceeded on the assumption that anyone old enough to suffer the usual consequences of a treason conviction should be considered old enough to suffer the particular consequence of expatriation. Certainly there could be no reason for attributing to Congress an intent, entirely unspecified, to establish a higher age minimum for this most serious act than was made applicable to the actions specified in subsections (b) to (g) described *supra,* pp. 62–63.

Subsections (i)—the renunciation statute—and (j) were added to Section 801 by the 78th Congress. (Act of July 1, 1944, 58 Stat. 677; Act of September 27, 1944, 58 Stat. 746.) In neither subsection did that body specify any minimum age limit, nor did it amend 803 (b) in either case. Yet it would appear inconceivable that (j) was meant to apply only to persons 21 and over. That subsection provides:

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[73] Compare House Reports 2396 and 3019, both of the 76th Congress. The amendment was inserted by the Senate after the Act had passed the House.

> (j) Departing from or remaining outside of the jurisdiction of the United States in time of war or during a period declared by the President to be a period of national emergency for the purpose of evading or avoiding training and service in the land or naval force of the United States.

In the House debates concerning H. R. 4257, one part of which became subsection (j), the sponsor of the bill, Mr. Dickstein, stated, "Any man, any American who leaves the country for the purpose of not serving his country in time of war is a traitor, in my judgment." He was then asked by a colleague: "I understand by that *if they are within the qualifying age* and an emergency exists then it is determined that they have left the country for that purpose?" (emphasis supplied). Mr. Dickstein answered: "That is right." 90 Cong. Rec. 3261. Again, prior to final passage of the bill, Mr. Dickstein stated that, "The purpose of the bill is to keep out of the country certain people who evaded war service and left this country after Pearl Harbor. * * * This bill will keep them out, and they will not be given a change [sic] to come back. *They are of military age.*" 90 Cong. Rec. 7725–7726. It hardly requires further demonstration that subsection (j) was intended to reach persons subject to military service at the time, nor that persons 18 years of age were subject to induction into such service prior to and after the outbreak of the last war. Sec. 3, Selective Training and Service Act of 1940 (54 Stat. 885).

The omission of a specified age limit in subsection (j), which as shown was made applicable to persons under 21,[74] by the same Congress which enacted subsection (i), in itself, we submit, raises a strong presumption that that body was not thinking in terms of a possible impact which the common law might have upon the additions it was making to the nationality laws. It follows that the Congressional failure to amend Section 803 (b) when enacting Section 801 (i) is thus immaterial, and we

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[74] A subsequent administrative construction of subsection (j) has also held that an individual under 21 is subject to the provisions thereof. This conclusion was reached by the Attorney General on May 18, 1946, in the case of *In re Ismael Acosta Hernandez*, exclusion proceedings No. 56196/251.

may accordingly look elsewhere to determine the true intent of Congress.

It is important to state that it is not necessary to determine whether Congress meant in passing 801 (i) to leave the question of age at large, as we believe it did with respect to subsection (h) particularly, or whether it assumed that the general statutory scheme of establishing 18 as the age of majority would apply. This is because in the administration of that subsection the Attorney General adopted a rule that renunciations could only be executed by persons 18 and over. In so doing he was fully aware of the legislative background of subsection (i), for the Attorney General himself proposed its enactment to the Congress and appeared at Congressional hearings to give testimony concerning it. See Hearings, House Committee on Immigration and Naturalization (78th Cong., 2d Sess.) on H. R. 4103. Examination of these Hearings and of the debates demonstrates that although the bill was of universal applicability, a purpose of the bill was to reach persons of Japanese ancestry 18 years of age and over who had answered Question 28 in the negative (Hearings, pp. 37, 52, 54–55; 90 Cong. Rec. 1778–1779, 1786–1789, 1982–1984).[75] In the light of this fact, and in the light of the Attorney General's construction of 801 (i) permitting renunciations by persons 18 years of age (Cf. *United States* v. *American Trucking Ass'ns.*, 310 U. S. 534; [76] *Shapiro* v. *United States*, 335 U. S. 1, note 13, and cases there cited), we submit that this Court should reverse the holding of the court below that a formal renunciation of United States nationality is void unless the renunciant was at the time 21 years of age or over. A contrary ruling, we submit, would not only fly in the teeth of the manifest Congressional intent but would create a further incongruity in that formal renunciations of United States nationality, if made outside this country, would be binding at the age of 18 (8 U. S. C. 801 (f)) whereas formal renunciations occurring in this country would not.

[75] It may be noted that the registration of persons 17 and over occurred in 1942, and that consequently such persons were at least 18 by July 1, 1944, when the renunciation statute was enacted.

[76] As there stated: *"Furthermore the Commission's interpretation gains much persuasiveness from the fact that it was the Commission which suggested the provision's enactment to Congress.* 310 U. S. 534 at 549. [Italics supplied.]

We submit that the court below erred in setting aside the renunciation of Inouye, and that, if jurisdiction in No. 11839 is found to exist, this Court should reverse the decisions below in that respect.

IV. The constitutional questions

The challenges made by the appellees to the constitutionality of the renunciation statute (R. 9, 14), may be roughly divided into two classifications, i. e., (1) those concerning method or procedure and (2) those having to do with fundamental power.

(1) With reference to the procedures provided by and under the renunciation statute, the appellees seem to say that they have been deprived of liberty without due process of law under the Fifth Amendment to the Constitution; that the authority to approve renunciations was improperly delegated to the executive branch of the Government, whereas it could be delegated, if at all, only to the judicial branch; that the statute constituted an unlawful delegation of legislative powers; and that the standards prescribed for renunciation are too vague and indefinite.

It is most difficult to understand the relation of these contentions to a case of this kind. Here Congress provided for the voluntary relinquishment of citizenship through unilateral action on the part of the renunciant, subject only to the approval of the Attorney General as not contrary to the interests of national defense. True, when he established procedures designed to avoid the possibility of coerced renunciations and to discourage such action on the part of persons not loyal to Japan, he may have gone beyond the strict requirements of the statute. However, he was authorized to prescribe the forms, and to designate the officials before whom renunciations were to be made; hence he would seem to have had ample authority for the measures that he prescribed. See, e. g., *United States* v. *Shreveport Grain Co.*, 287 U. S. 77, 85. Clearly his regulations did not transgress upon legislative functions. See *United States* v. *Grimaud*, 220 U. S. 506, 517; *Hirabayshi* v. *United States*, 320 U. S. 81, 102.

The contentions that the Congressional permission given the appellees to renounce constituted a deprivation of liberty

without due process of law under the Fifth Amendment and that the authority to approve renunciations could be granted, if at all, only to the judicial branch of the Government, are not understood. If by "liberty" the appellees have reference to freedom of choice, the renunciation statute certainly did not detract from that freedom. And, plainly, a renunciation proceeding under the statute in no sense involved a case or controversy requiring resolution through the exercise of the judicial power of the United States described in Article III of the Constitution. Accordingly, we submit, there can be no serious question as to the constitutionality of the procedural aspects of the statute.

(2) The remaining contentions advanced by the appellees as to constitutionality seem to be that the statute constitutes unreasonable racial discrimination and that a person born in the United States may not be permitted to lose his citizenship even by his own voluntary action.

Whatever the occasion for its enactment, the renunciation statute is nondiscriminatory on its face beyond withholding the privilege of renunciation where the Attorney General finds its exercise contrary to the interests of national defense, and it would be inaccurate to assume that such privilege has been exercised only by persons of Japanese ancestry. The coverage of the statute is plainly as broad as the provision for renunciations before consular officers (8 U. S. C. § 801 (f)). Clearly, the contention that the statute is unconstitutional, because unreasonably discriminatory upon the basis of race, is fallacious.[77]

[77] The appellees' complaint (R. 14) that no announcement regarding means of renunciation "was made to American citizens of non-Japanese ancestry" was admitted by the answer (R. 22–23) with the explanation that "only from American citizens of Japanese ancestry were sufficient numbers of requests to be permitted to renounce received to warrant the giving of information as to how such renunciations could be accomplished". In fact, but for the professed desire of the pro-Japanese segregants at Tule Lake to renounce their citizenship, it may be doubtful that the statute would have been enacted. (See, e. g., H. Rept. 1075, 78th Cong., 2d Sess.) The record shows that "individual letters and group petitions began to come to the Department of Justice containing requests for permission to renounce citizenship" shortly after the statute was approved (R. 106). Furthermore, it is doubtful that mere announcement of the renunciation regulations had an appreciable effect upon subsequent decisions to renounce. See pp. 23–26, *supra;* cf. R. 148.

The notion that the Fourteenth Amendment to the Constitution deprived the Congress of its authority to permit voluntary expatriations seems equally lacking in merit. It is not supported by any authority of which we are aware. The Congress by the Act of July 27, 1868, 15 Stat. 223 (8 U. S. C. § 800) proclaimed that "the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness" and declared that any decision "of any officer of the United States which denies, restricts, impairs, or questions the right of expatriation, is * * * inconsistent with the fundamental principles of the Republic".[78] This policy applies as well to American-born citizens as to others. *Perkins* v. *Elg*, 307 U. S. 325, 334; *Reynolds* v. *Haskins*, 8 F. (2d) 473, 474.

Moreover, in enacting the statute the Congress did so with knowledge of the evacuation and relocation programs.[79] When the Bill was pending before the House it closely examined most of the Constitutional questions which have been raised by the appellees.[80] For example, an amendment was offered,[81] the purpose of which was to authorize courts to find that the negative answers given to the loyalty question propounded at the time of registration (see p. 12, *supra*) were voluntary acts of expatriation.[82] However, it was argued that such a provision would be of doubtful constitutionality and the motion was de-

[78] A few days earlier, on July 21, 1868, the same Congress had declared that the Fourteenth Amendment had been ratified and was a "part of the Constitution of the United States". See U. S. C. vol. 1, p. xliv, note.

[79] As to the Congressional knowledge of the evacuation and leave clearance practices see the statements and references to legislative materials in *Korematsu* v. *United States*, 323 U. S. 214, 219, 228, 238, 239, 241, and *Ex parte Endo*, 323 U. S. 283, 287, 291, 295, 296, 303, 304, 309. The segregation program was caused or to some extent influenced by Congressional intervention (see p. 14, n. 21, *supra*). In recommending the renunciation legislation to the Congress the Attorney General pointed to the pro-Japanese group at the Tule Lake center. (See H. Rept. No. 1075 and S. Rept. 1029, to accompany H. R. 4103, 78th Cong., 2d Sess.)

[80] 90 Cong. Rec. 1778–1789, 1981–1992.

[81] Id. 1985.

[82] Id. 1982.

feated.[83] The legislation in its present form passed the House by a large majority.[84]

It is suggested that this action of the Congress, which was well aware of the constitutional problems and had extensive knowledge of the evacuation and relocation programs with their attendant hardships, must be taken as a deliberate legislative decision that renunciations influenced by resultant disaffection for the United States would be voluntary and within the power of the Congress to sanction. Cf. *MacKenzie* v. *Hare,* 239 U. S. 299, 311–312. In these circumstances the views of the legislators are, of course, entitled to great respect. Cf. *McCulloch* v. *Maryland,* 4 Wheat. 316, 401–402.

We submit that the statute is clearly constitutional in all respects.

CONCLUSION

For the foregoing reasons it is respectfully submitted that there is a total lack of jurisdiction in No. 11839 and that the judgment in that case should accordingly be reversed and the proceedings dismissed. If, however, jurisdiction of such proceedings is held to exist, we further submit that the judgments in both Nos. 11839 and 12082 are erroneous and should, accordingly, be reversed.

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[83] Id. 1991.

[84] Id. 1992. The Senate considered the bill by unanimous consent and passed it without controversial debate. Id. 6617.

APPENDIX A

SECTION 401 OF THE NATIONALITY ACT OF OCTOBER 14, 1940, ch. 876, 54 Stat. 1168, as amended, as it appears in Title 8 of the United States Code, 1946 Edition:

§ 801. GENERAL MEANS OF LOSING UNITED STATES NATIONALITY.

A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:

(a) Obtaining naturalization in a foreign state, either upon his own application or through the naturalization of a parent having legal custody of such person: Provided, however, That nationality shall not be lost as the result of the naturalization of a parent unless and until the child shall have attained the age of twenty-three years without acquiring permanent residence in the United States: Provided further, That a person who has acquired foreign nationality through the naturalization of his parent or parents, and who at the same time is a citizen of the United States, shall, if abroad and he has not heretofore expatriated himself as an American citizen by his own voluntary act, be permitted within two years from the effective date of his [1] chapter to return to the United States and take up permanent residence therein, and it shall be thereafter deemed that he has elected to be an American citizen. Failure on the part of such person to so return and take up permanent residence in the United States during such period shall be deemed to be a determination on the part of such person to discontinue his status as an American citizen, and such person shall be forever estopped by such failure from thereafter claiming such American citizenship; or

[1] So in original.

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(b) Taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state; or

(c) Entering, or serving in, the armed forces of a foreign state unless expressly authorized by the laws of the United States, if he has or acquires the nationality of such foreign state; or

(d) Accepting, or performing the duties of, any office, post, or employment under the government of a foreign state or political subdivision thereof for which only nationals of such state are eligible; or

(e) Voting in a political election in a foreign state or participating in an election or plebiscite to determine the sovereignty over foreign territory; or

(f) Making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State; or

(g) Deserting the military or naval forces of the United States in time of war, provided he is convicted thereof by court martial and as the result of such conviction is dismissed or dishonorably discharged from the service of such military or naval forces: Provided, That notwithstanding loss of nationality or citizenship or civil or political rights under the terms of this or previous laws by reason of desertion committed in time of war, restoration to active duty with such military or naval forces in time of war or the reenlistment or induction of such a person in time of war with permission of competent military or naval authority, prior or subsequent to January 20, 1944, shall be deemed to have the immediate effect of restoring such nationality or citizenship and all civil and political rights heretofore or hereafter so lost and of removing all civil and political disabilities resulting therefrom; or

(h) Committing any act of treason against, or attempting by force to overthrow or bearing arms against the United States, provided he is convicted thereof by a court martial or by a court of competent jurisdiction; or

(i) Making in the United States a formal written renunciation of nationality in such form as may be prescribed by, and before such officer as may be designated by, the Attorney General, whenever the United States shall be in a state of war and the Attorney General shall approve such renunciation as not contrary to the interests of national defense; or

(j) Departing from or remaining outside of the jurisdiction of the United States in time of war or during a period declared by the President to be a period of national emergency for the purpose of evading or avoiding training and service in the land or naval forces of the United States. (Oct. 14, 1940, ch. 876, title I, subch. IV, § 401, 54 Stat. 1168; Jan. 20, 1944, ch. 2, § 1, 58 Stat. 4; July 1, 1944, ch. 368, § 1, 58 Stat. 677; Sept. 27, 1944, ch. 418, § 1, 58 Stat. 746.)

APPENDIX B

The pertinent regulations of the Attorney General read as follows (9 Fed. Reg. 12241; 8 C. F. R. (Supp. 1944) 316 et. seq.):

§ 316.2 *Nationals permitted to apply for renunciation.* Any national of the United States may make in the United States a request in writing to the Attorney General, Department of Justice, Washington, D. C., for the form of "Application for Renunciation of United States Nationality."

§ 316.3 *Filing of application.* A completed and signed application for renunciation of United States nationality on the form prescribed by the Attorney General may be sent to the Attorney General, together with any certificate of citizenship, certificate of naturalization, certificate of derivative citizenship and any United States passport which may have been issued to the applicant. An applicant will be notified if it is determined upon the application that the requested renunciation appears to be contrary to the interests of national defense.

§ 316.4 *Hearing on application.* A hearing will be conducted by a hearing officer, designated by the Attorney General, upon each application for renunciation which does not appear to be contrary to the interests of national defense. The hearing officer will notify the applicant of the time and place of hearing.

§ 316.5 *Formal written renunciation of nationality.* After a hearing the applicant may file with the hearing officer, on a form prescribed by the Attorney General, a formal written renunciation of nationality and a request for the Attorney General's approval of such renunciation as not contrary to the interests of national defense.

§ 316.6 *Hearing officer's recommendation.* The hearing officer shall recommend approval or disapproval

by the Attorney General of the applicant's request for approval of the formal written renunciation of nationality. The hearing officer, in making his recommendation, is authorized to consider not only the facts presented at the hearing, but also results of any investigation and any information which may be available to him in reports of Government agencies or bureaus, and from other sources, relating to the applicant's allegiance and relating to the effect of renunciation of nationality upon the interests of national defense.

§ 316.7 *Approval or disapproval by Attorney General.* The hearing officer's recommendation and the record of the hearing and any other facts upon which it is based, will be submitted to the Attorney General for his approval or disapproval of the applicant's formal written renunciation of nationality. A renunciation of nationality shall not become effective until an order is issued by the Attorney General approving the renunciation as not contrary to the interests of national defense.

§ 316.8 *Notice of Attorney General's decision.* The applicant will be notified of the Attorney General's approval or disapproval of the formal written renunciation of nationality. Notice of the approval of renunciation of nationality shall be given to the State Department, the Alien Property Custodian, Foreign Funds Control Section of the Treasury Department, and the Federal Bureau of Investigation and the Immigration and Naturalization Service of the Department of Justice. The notice to the Immigration and Naturalization Service shall be accompanied by any certificate of citizenship, certificate of naturalization or certificate of derivative citizenship issued to and surrendered by the applicant as required by § 316.3 hereof. Upon receipt of such notice and evidence of citizenship so surrendered, the Immigration and Naturalization Service shall notify the clerk of the court in which the applicant's naturalization occurred that the renunciation of nationality has been approved and the clerk of the court shall be requested to enter that fact upon the record of naturalization.

The notice to the Department of State shall be accompanied by any United States passport surrendered by the applicant as required by § 316.3 hereof.

§ 316.9 *Effective period of these regulations.* These regulations shall be effective from the date hereof and until cessation of the present state of war unless sooner terminated by the Attorney General.

FRANCIS BIDDLE,
Attorney General.

OCTOBER 6, 1944.

APPENDIX C

War Relocation Authority
Administrative Manual

Chapter 110—Segregation

Segregation Policy 110.1

It is the policy of the War Relocation Authority to place in a separate center those persons of Japanese ancestry residing in relocation centers who by their acts have indicated that their loyalties lie with Japan during the present hostilities, or that their loyalties do not lie with the United States.

4/26/44
Supersedes Issuance of 10/6/43

Tule Lake Center 110.2

1. The name of the segregation center shall be Tule Lake Segregation Center. The post office address is Newell, California.

2. All policies of the War Relocation Authority with respect to food, clothing, health, education, employment within centers, compensation for injuries and sickness, public assistance grants, consumer enterprises, evacuee property, legal services, and all other aspects of administration and control will be in force at the Tule Lake Center in the same manner as at the relocation centers, except as otherwise provided in this chapter.

3. Residents of the Segregation Center are not internees. As segregants, they are governed by the regulations of the War Relocation Authority applicable to the Tule Lake Segregation Center, and by the relevant provisions of State and Federal law. Residents of the Center having grievances arising out of the operation of the Center or the application to them of any of the rules and regulations there in force should take them up with WRA authorities in charge of the administration of

the Center. These authorities will in turn take up with the proper State, Federal, or other officials, any matters which fall within their jurisdiction.

A. The Geneva Prisoners of War Convention of 1929 is applicable to prisoners of war and, by agreement of the United States and Japan, applicable provisions relate to interned or detained Japanese nationals. So far as the Tule Lake Center is concerned, the applicable provisions of the Geneva Convention relate only to aliens. Such provisions are not applicable to persons having dual nationality; under international law the dominant nationality of such persons is deemed to be that of the nation in which they reside, and not of the foreign nation. The Convention does not apply to United States citizens. Citizens of the United States, even though they are also citizens of another country under the laws of that country, are subject, while they are in the United States, solely to the laws of the United States and of the State in which they reside. There is no existing procedure by which citizens may renounce their United States citizenship while on United States soil. Aliens, i. e., persons not having American citizenship, have the privilege of applying to the Spanish Embassy, as the representative of the Protecting Power, for redress of grievances and for further assurance of compliance with the requirements of the Convention.

4/26/44
Supersedes Issuance of 10/6/43

B. During the war, repatriation to Japan will presumably continue to be on a reciprocal exchange basis dependent on agreements between the United States and Japan. The War Relocation Authority has accepted applications for exchange and has referred these applications to the State Department, which handles negotiations for the United States, with the request that they be considered in further negotiations. Persons desiring to record their wishes with respect to repatriation should register their desires with both the War Relocation Authority and the Spanish Embassy in order to facilitate arrangements for exchanges if and when they can be arranged. On the basis of the existing understanding with the Japanese

Government, the United States cannot send a Japanese national to Japan until the Japanese Government is willing to accept him. So far the Japanese Government has shown primary interest in persons named on lists submitted by it to the United States through the Spanish Embassy. Determination of whether a particular applicant is acceptable to the Japanese Government is not within the control of the United States Government. It is, rather, a matter between the Japanese national and his Government, through the intermediary of the Protecting Power. Therefore, persons desiring to be repatriated should address themselves to the Spanish Embassy, in charge of Japanese interests in the United States, to the end that they may request the Embassy to exert its influence with the Japanese Government in their behalf. Residents of the Center have full opportunity to use the channels of communication provided by international law.

C. It is not possible at this time to anticipate what will be the status of segregants residing at the Tule Lake Center after the war. The Project Director shall attempt to keep the residents advised of any changes that may be made in the laws governing their citizenship.

4/26/44

Persons To Be Placed in Tule Lake Center 110.3

1. All persons in the following categories shall remain in the Tule Lake Center, or shall be transferred to that center, as the case may be:

A. All persons who have formally asked for repatriation or expatriation to Japan and have not retracted their requests prior to July 1, 1943. If a Project Director should believe that residence in the Tule Lake Center by a particular person in this category would work an unnecessary hardship, he may recommend to the Director that such person be excepted from the category; and if the Director approves, such person shall be excepted.

B. All persons who, at the time of the registration for Army service and war industries purposes, answered question 28 of Form WRA–126 Rev. or DSS Form 304A in the negative, or

failed or refused to answer it, and (a) who have not changed their answers prior to the date of this instruction, and (b) who are in the opinion of the project Director loyal to Japan, or are not loyal to the United States. For the purpose of segregation, no person in this category shall be considered loyal to the United States unless he expressly changes his answer to question 28 to an affirmative and satisfies the Project Director that the changed answer is bona fide.

C. All persons to whom the Director has denied leave clearance. This category will include persons in the following classes *after hearings have been held and if and when leave clearance has been denied under Chapter 60:* (a) Persons about whom there is an adverse report by a Federal intelligence agency; (b) persons who have answered question 28 negatively and who changed their answers prior to the date of this instruction, or who answered such question with a qualification; (c) persons who have requested repatriation or expatriation and have retracted their request prior to July 1, 1943, and persons who have requested repatriation or expatriation subsequent to July 1, 1943; (d) persons for whom the Japanese-American Joint Board established in the Provost Marshal General's office does not affirmatively recommend leave clearance; and (e) persons about whom there is other information indicating loyalty to Japan.

10/6/43
Supersedes A. I. #100

2. Members of the immediate family of a person who falls within one of the three categories set forth in Section 110.3.1 shall upon their individual request be permitted to remain with such person in the Tule Lake Center, or to accompany him to that center, as the case may be. If minor members of the immediate family who do not themselves fall within one of the categories set forth in Section 110.3.1 object to residence at the Tule Lake Center every possible assistance shall be extended in helping to work out appropriate arrangements along the lines suggested in Section VI-D of Administrative Instruction No. 65 (Manual Section 70.1), dealing with minor children of persons being repatriated. For the purpose of determining

what is an immediate family the guides set forth in Section XII of Administrative Instruction No. 103 (Manual Section 30.4) shall be followed.

3. Where one member of an immediate family residing in a center other than the Tule Lake Center falls within one of the three categories set forth in Section 110.3.1, but he or some other member of such family is so ill or infirm that removal will in the opinion of the project medical officer endanger life or seriously impair health, all members of the family shall be permitted to remain in the center of residence so long as such condition continues.

4. Persons resident in the Tule Lake Center who do not fall within one of the categories set forth in Section 110.3.1, but who are so ill or infirm that their removal will in the opinion of the project medical officer endanger their lives or seriously impair their health shall be permitted to remain in the Tule Lake Center so long as such condition continues. Members of their immediate families, as defined in Section 110.3.2, shall upon request also be permitted to remain in the Tule Lake Center so long as such condition continues.

10/6/43
Supersedes A. I. #100

Priorities of Movement to Tule Lake Center 110.4

1. In general, persons will be moved to the Tule Lake Center in the following order of priority:

A. Persons who have applied for repatriation or expatriation and have not retracted their requests prior to July 1, 1943.

B. Bachelor Kibei falling within the second or third category set forth in Section 110.3.1. For the purpose of this paragraph "bachelor Kibei" shall mean a male citizen evacuee, unmarried as of the date of this instruction, who has spent a total of three or more years in Japan since January 1, 1935.

C. All others.

2. These priorities may be modified from time to time as to particular relocation centers, and priorities will be established for other persons to be moved to the Tule Lake Center.

3. The first movement to the Tule Lake Center of persons falling within Section 110.4.1 (A) shall be from the Granada, Minidoka, Jerome, Rohwer, Heart Mountain, and Central Utah relocation centers. After such persons have been moved from these centers, movement of persons from the Manzanar, Colorado River, and Gila River relocation centers shall be arranged. Priorities between relocation centers for movement of persons to be segregated for other reasons shall be established from time to time.

10/6/43
Supersedes A. I. #100

Preparation for Transfers to Tule Lake 110.5

1. A. The Project Director of each center other than the Tule Lake Center shall immediately prepare a list, by categories, of all persons in the center (1) who have requested repatriation or expatriation without retraction prior to July 1, 1943, or (2) who have been denied leave clearance (first and third categories listed in Section 110.3.1). Each such person shall be promptly notified in writing that he will be transferred to the Tule Lake Center at a date which will subsequently be made known to him. The notice shall further specify a time and place at which he and his immediate family, if any, should appear for an interview.

B. The Project Director shall cause each such person and his immediate family, if any, to be interviewed for the purpose of determining (1) whether such person is able to travel and if so whether special travelling accommodations will be necessary (to be confirmed in case of doubt by the project medical officer); (2) what members of the immediate family wish to accompany him; and (3 what further assistance is needed by the evacuee or his family. The interviewer shall notify the evacuee of the provisions of Section 110.7, dealing with transportation of property, and assist in filling out Form WRA–156 if the evacuee wishes property to be transported thereunder. Members of the immediate family may be interviewed separately wherever it is deemed advisable in order to arrive at their true preference.

C. Each project director shall inform the Director by wire not later than August 10, 1943, of the number of evacuees to be transferred under this paragraph, and the family groupings and health problems involved.

2. A. The Project Director of each center other than the Tule Lake Center shall also immediately prepare a list of persons in the center who fall within the second category listed in Section 110.3.1. If the persons on such list have not already been interviewed for the purpose of determining whether they are loyal to Japan or loyal to the United States, the Project Director shall promptly interview them for such purpose and make his determination, striking from such list the names of those who in his judgment are loyal to the United States.

B. The Project Director shall give each person on the list prepared under this Section 110.5.2 a notice and additional interview in the manner prescribed in Section 110.5.1, and the Project Director shall notify the Director of the number of evacuees to be transferred and the family groupings and health problems involved.

3. As application of center residents for leave clearance are denied by the Director, from time to time, the names of such persons shall be added to the list prepared under Section 110.5.1 above and processed as provided thereunder.

10/6/43
Supersedes A. I. #100

Preparations for Transfers to Tule Lake 110.5

4. Section 50.3 of the Manual on travel between centers does not apply to movements from a relocation center to Tule Lake. All transfers to Tule Lake shall henceforth be carried out according to the following procedure.

A. Whenever residents of a relocation center should be transferred to Tule Lake under the terms of Manual Section 110.3, or for a reason deemed justifiable by the Project Director wish to transfer there, the Project Director shall communicate with the Assistant Director in San Francisco, giving the following information:

(1) Name(s) of person or persons
(2) Suggested mode of travel

(3) Date by which travellers will be ready to leave

(4) Full justification for the transfer

B. The Assistant Director will check with the Project Director at Tule Lake to determine whether living accommodations are available at Tule Lake and whether the transfer is acceptable to Tule Lake.

C. If the transfer is acceptable to Tule Lake and meets with approval of the Assistant Director, he will (See WRA Handbook Section 140.4.20 covering movements of less than full trainload)—

(1) Arrange transportation if this remains to be done.

(2) Secure military permits from the Western Defense Command for travel of the evacuees through the prohibited area.

(3) Make such arrangements as he considers necessary with the proper military authorities for a military or civilian escort to accompany the travelers from the center of departure to Tule Lake.

(4) Advise both Project Directors of the final arrangements and authorize departure of the evacuee from the relocation center.

D. The center from which evacuees transfer will prepare Departure Advices, WRA–178, for each person transferring, and Tule Lake will prepare Admission Advices, WRA–177, for each person arriving, showing the actual date of departure or admission, in accordance with the Statistics Handbook, 50.8.

8/30/44
Release #115

Preparation for Transfers From Tule Lake 110.6

1. The Project Director of the Tule Lake Center shall immediately prepare two lists containing the names of the following classes of persons:

A. All persons falling within the three categories set forth in Section 110.3.1, who are to remain in the Tule Lake Center, together with their immediate families (hereinafter called the Resident List). If all the persons falling within the second category set forth in such paragraph have not already been

interviewed for the purpose of determining whether they are loyal to Japan or loyal to the United States, the project director shall promptly interview them for such purpose and make his determination, striking from the Resident List the names of those who in his judgment are loyal to the United States, together with the names of the members of their immediate families, and adding such names to the list provided for immediately below.

B. All other persons (hereinafter called the Removal List).

2. A. Each person whose name appears on the Removal List shall be promptly notified in writing that the center has been selected as the center of residence for evacuees loyal to Japan; that if his relocation is not arranged for prior to the time WRA determines it is necessary for him to leave he will be transferred to another center, unless he is physically incapacitated; that he is requested to appear at a designated time and place for an interview; and that at that interview he will be requested to express preferences for transfer as between Central Utah, Granada, Heart Mountain, Jerome, Minidoka, and Rohwer, which preferences may have to be disregarded but will be heeded if possible to do so.

B. The Project Director shall cause each such person to be interviewed, preferably by family groups, to determine: (1) whether the evacuee is able to travel and if so whether special traveling accommodations will be necessary (to be confirmed in case of doubt by the project medical officer); (2) whether he would prefer transfer to Central Utah, Granada, Heart Mountain, Jerome, Minidoka or Rohwer (listing all in order of preference, and making it clear that his first preferences may have to be disregarded); and (3) what further assistance is necessary. The interviewer shall notify the evacuee of the provisions of Section 110.7 hereof, dealing with transportation of property, and assist in filling out Form WRA–156 if the evacuee wishes property to be transported thereunder.

C. During the month of August a special effort will be made to facilitate the relocation of residents of the Tule Lake Center who are on the removal list. No person on the removal list shall be permitted to request repatriation or expatriation, or to change his answer to question 28 from an affirmative to a

negative or other answer raising real doubts as to loyalty, until the large movements under this instruction to and from the Tule Lake Center have been completed.

D. The Project Director shall inform the Director by wire not later than August 20 of the number of evacuees on the Removal List who have been processed for transfer to another center, the family groupings and health problems involved, and the respective preferences expressed for Central Utah, Granada, Heart Mountain, Jerome, Rohwer and Minidoka. If at all possible, processing should be completed by that date. If it is not, the Project Director shall thereafter wire such information to the Director weekly until processing has been completed.

3. Each person falling within one of the three categories set forth in Section 110.3.1 (whose name will appear, together with the names of the members of his immediate family, on the Resident List) shall be promptly notified in writing that he has been designated to remain in the center. If there are members of his family who do not fall within one of these categories, he shall further be notified of that fact and requested to appear at a designated time and place, together with such members, for an interview. Such interview shall determine whether any such family member wishes to leave the center (it being made clear to him that it may be difficult for him to leave the center unless he exercises the option now). If he wishes to leave, his name shall be added to the Removal List, the interviewer shall proceed with the interview, and such person shall be processed, as if his name had originally appeared on the Removal List.

4. As additional applications of Tule Lake residents for leave clearance are denied, the names of such persons shall, if on the Removal List, be transferred to the Resident List, and they shall be promptly notified that they are no longer eligible to leave the center. As additional applications of Tule Lake residents for leave clearance are granted, the names of such persons shall, if on the Resident List, be transferred to the Removal List, and such persons shall be processed as provided in Section 110.6.2 above.

10/6/43
Supersedes A. I. #100

Transportation of Property of Transferees 110.7

1. All evacuees transferring from one center to another under this instruction shall be notified to carry with them, as hand baggage and checkable baggage, sufficient clothing and necessary household and personal effects to maintain them for at least 60 days, in view of transportation and other administrative difficulties that will necessarily be involved in transporting their property separately.

2. All furniture and other property in the apartments of such evacuees or stored in warehouses at the center of departure shall be crated and transported to the center of destination upon request of the evacuee presented to the Project Director upon Form WRA–156. Shipment to the new center at Government expense shall be in addition to transportation furnished under Administrative Instruction No. 78, (Manual Chapter 100). The cost shall be borne by the center from which the evacuee is transferred.

10/6/43
Supersedes A. I. #100

Responsibilities in Connection With Movement of Transferees 110.8

1. A. Upon the basis of information furnished him from time to time by the Project Directors under this instruction the Director will determine the time of movement and the number of evacuees to be transferred in each movement from one center to another. A tentative schedule of initial movements will be furnished to the project directors at the earliest possible date.

B. The Director will make all arrangements for common carrier facilities for the movement of each group of evacuees, and for military escort where necessary. He will further obtain any military permits that may be necessary for the travel of evacuees in the evacuated areas.

C. The Director will wire each Project Director concerned, at least five days before the date of departure, of the number of persons to be transferred and the family groupings involved, the transportation facilities arranged for, the time of departure and arrival, and all other details in connection therewith. (Or-

dinarily this will merely confirm a tentative schedule already furnished to the project directors.)

2. A. The Project Director of the center of departure shall be responsible for completing all other arrangements to be made at the center in connection with each movement. He shall designated a suitable WRA representative to accompany each movement. Such person shall be responsible to the Director while en route, and shall be regarded as the Director's representative.

B. On or before the date of departure the Project Director shall ship to the Project Director of the center of destination all project records pertaining to the transferees, including Form 12, Form 26, the social data registration form, individual census record, immunization card, medical and hospital record, repatriation record, leave clearance docket, employment record, and any school, welfare, parole, or other record. When a movement consists of a trainload such records shall be shipped on the same train.

C. The Project Director shall furnish the WRA representative who is to accompany each movement with two copies of the train list, and the representative shall present such copies to the Project Director of the center of destination upon arrival. Immediately after departure the Project Director shall forward one copy of the train list to the Director.

3. A. The Project Director of the center of destination shall be responsible for arranging for housing, beds, and bedding for all transferees, in accordance with present WRA policy.

B. The Project Director shall check the arriving transferees against the train list, and shall promptly notify the Washington office of their arrival and of any variances from the train list if any.

C. The Project Director shall do everything within his power of establish transferees in project jobs fitted to their abilities and to do everything practicable to fit them into the social life of the center. To the latter end he shall obtain the cooperation of the community council and other evacuee organizations in the center.

10/6/43
Supersedes A. I. #100

Departure from Tule Lake Center 110.9

1. No person remaining at the Tule Lake Center or transferred thereto under the provisions of this chapter shall be granted seasonal or indefinite leave from the Tule Lake Center.

2. No person remaining at the Tule Lake Center or transferred thereto under the provisions of this chapter shall be transferred to another center except pursuant to the following provisions:

A. Persons remaining at the Tule Lake Center solely because of illness or infirmity (see Section 110.3.4) shall be transferred to another center as soon as such transfer will not in the opinion of the Project Medical Officer endanger their lives or seriously impair their health. Family members who have remained with them who do not fall within one of the three categories set forth in Section 110.3.1 above may be transferred to other centers prior to such time upon their individual request.

B. Persons resident at the Tule Lake Segregation Center to whom leave clearance has not been denied may apply for and receive leave clearance in accordance with the provisions of Section 60.10 of the Leave Handbook. Any such person who has not previously filled out Form WRA–126 or DSS form 304A should fill out Form WRA–126 as an application for leave clearance. If the form has previously been filled, the applicant should file with the Project Director a letter requesting a leave clearance hearing. Persons who had already received leave clearance before the Segregation Center was established, and who remained at or removed to the Segregation Center for family reasons or other special reasons (except those who remained solely because of illness or infirmity, and members of their families) but who later wish to leave the Segregation Center should file with the Project Director a letter requesting a supplemental leave clearance hearing. After leave clearance is granted by the Director, the applicant shall be transferred to a relocation center, where he may apply for indefinite or seasonal leave.

C. Any person whose application for leave clearance has been denied may, while a resident of the Segregation Center, and not otherwise, file an appeal with the Board of Appeals

for Leave Clearance in accordance with the procedure prescribed by Section 60.11 of the Leave Handbook.

If, as a result of this appeal, leave clearance is granted by the Director the applicant shall be transferred to a relocation center, where he may apply for indefinite or seasonal leave.

4/26/44
Supersedes Issuance of 10/18/43

Government and Control 110.10

1. The Project Director of the Segregation Center is responsible for the maintenance of law and order within the Center, and for the enforcement of all regulations established by the War Relocation Authority for the administration of the Center. The Project Director has full disciplinary authority over the evacuees in relation to all offenses committed by them within the Center, though cases involving offenses against State or Federal law will be referred by the Project Director to the proper officials for action. In determining what acts constitute offenses and in setting up the procedure for conducting hearings on account of offenses committed, the Project Director shall be governed by the provisions of Manual Section 30.1 in so far as they are relevant.

2. The Project Director shall, when need arises, establish at the Center the position of Hearing Officer. The function of the Hearing Officer will be to assist the Project Director in the handling of cases involving disciplinary action. In hearing cases the Hearing Officer shall be governed by the same rules which govern the Project Director in conducting hearings. The Hearing Officer will be directly responsible to the Project Director and shall make to the Project Director a full report on each case heard, with transcript and record thereof, together with his recommendation as to the decision to be rendered therein. No decision shall be effective until it has been approved by the Project Director.

3. The residents of the Segregation Center will be invited to establish a Representative Committee. The membership of this Representative Committee shall be selected by orderly, representative, elective procedures. The members shall be

selected on a geographical basis to represent residential areas within the Center, shall be selected for fixed periods of time, and the total membership of the Committee shall not be greater than twelve persons.

The function of the Representative Committee shall be that of acting as the official representative of the residents of the Center in communicating to the Project Director the viewpoints, attitudes and requests of the residents, in conveying to the residents information concerning WRA regulations and determinations affecting them, and in advising with the Project Director on matters as to which collaboration between the Administration and the residents is needed.

4/26/44

Internal and External Security 110.11

1. Under the existing Memorandum of Understanding between the United States Army and the War Relocation Authority, the military police unit stationed at the Segregation Center will be responsible for patrolling the external boundaries of the Center and for patrolling certain fences and manning certain watch towers between the Administrative Area and the residential area for segregants. Subject to such arrangements as may be made with the military authorities, the Project Director may request the detail of detachments of military police to assist in the arrest of individuals or the quelling of disturbances when, in his judgment, such assistance is needed. Other arrangements for close cooperation between the War Relocation Authority administrative organization and the military police unit may be made as they become desirable.

2. The Internal Security Section shall include an adequate staff of appointed police officers. Such officers may carry firearms within the evacuee residential area only when expressly authorized by the Project Director to do so. This authorization shall be limited to emergency cases such as making arrests, and shall be subject to such administrative control as the Project Director shall deem necessary. Patrol cars used by the police will be supplied with two-way radios, tear gas bombs, and such other law enforcement equipment as may be authorized by the Project Director in cases of emergency. Guards at the gates

between the Administrative and residential areas, and guards and patrolmen stationed in the various sections of the administrative area and responsible for the protection of life and Government property in those areas, may carry firearms. All firearms required by the internal security force, when not in use, shall be maintained in an armory to be established by the War Relocation Authority at a safe place within the Administrative Area.

3. As conditions warrant, an evacuee patrol force will be recruited and trained for assisting in the preservation of law and order within the evacuee residential area. The Project Director shall designate the type of police work in which the evacuee patrol force shall from time to time engage, and may add to the duties of the evacuee patrol force as conditions warrant.

4/26/44

Center Services and Activities 110.12

1. Freedom of religion for all residents will be protected. State Shinto, which is nationalistic rather than religious in character, will not be permitted at the Center.

2. Elementary and high schools of an American type, conducted in English, will be provided at Government expense. Nursery school education necessary to prepare pupils for entrance into the American type elementary schools will be provided. A limited adult education program including vocational training essential for project operation, English, or Americanization classes may be provided as the need arises. Such other types of schools as may be desired by the evacuees may be operated in WRA buildings but must be financed, staffed, and otherwise supplied by the evacuees without cost to the Government. The use of buildings and the scheduling of classes in order to avoid conflicts between the English and Japanese type schools will be arranged through the administrative staff and the responsible evacuee representatives.

3. Group activities of an American type will be supported and definitely encouraged for those interested in such programs. Japanese social and cultural activities will be permitted without expense to the Government, but demonstrations that may lead

to disturbances of the peace of the community are prohibited.

4. The Project Director may arrange for the establishment of a project newspaper which may, if he desires, carry both Japanese and English sections. The paper will be supervised and censored by appropriate representatives of the Project Director.

5. An agricultural program may be worked out in collaboration with the residents of the Center.

6. Industrial enterprises may be established to produce materials or equipment for use within the Center.

10/17/44
Supersedes Issuance of 4/26/44
Release #132

Visiting to and From Center 110.13

1. Short term leave will be granted only when the granting of such leave is in the interest of the Government. Leave will not be granted in cases where the reasons therefor are of concern primarily to the evacuee, but it may be in the interest of the Government to grant leave in cases of extreme personal emergency involving sickness or death, litigation, or important property adjustments, and the Project Director is authorized to exercise his discretion in the granting of leave in such cases. In such cases WRA will not pay transportation or other costs unless the segregant is without funds or under unusual circumstances in which the Project Director deems payment by WRA to be proper.

2. An escort shall be provided in all cases in which an evacuee leaves the center on short term leave. The Project Director may in his discretion require that the expenses of the escort be borne, in whole or in part, by the evacuee.

3. No visitors to the Tule Lake Segregation Center, except members of the armed forces in uniform, will be permitted except on the basis of permission secured in advance from the Project Director, who will establish such procedure for the issuance of visiting permits as he deems proper. Rooms will be assigned by WRA out side the evacuee residential area for the

accommodation of overnight visitors. Rooms outside the evacuee residential area will also be provided where visitors can talk with residents of the center whom they are visiting. Visitors will not be allowed within the evacuee residential area except with the express permission of the Project Director. Visitors will not be housed in evacuee quarters during their visits.

4. Soldiers in uniform visiting the center may make arrangements for quarters in the Military Police area, or in the Administrative Area, and will be expected to occupy such quarters at night. During the day they will be permitted such access to the evacuee areas as the Project Director may authorize.

4/26/44

Contraband and Censorship 110.14

Mail, except first-class, and packages will be subject to inspection by the Army, as provided in Army regulations established for the Center. There will be no censorship of first class mail except for the residents of Area B and of any isolation center which may be established outside the project. (See section 110.15.) Telephone calls by segregants must be limited to emergency calls, must be conducted in English, and will be monitored and recorded. All telegrams sent from the Center must be in English.

4/26/44

Administrative Separation of Residents Within Center 110.15

1. In order to promote the orderly administration of the Center and to maintain peace and security for the residents, it will be necessary from time to time further to restrict the movement and activities of persons whose influence or actions may be disruptive of the operation of the Center. Such persons, after investigation and decision by the Project Director, will be transferred either to a separate area within the Center, designated herein as Area B, or to an isolation center outside the project. Since such further separation of individuals is a purely administrative arrangement to secure the peaceful and orderly administration of the Center, only such investigation

need be made as is requisite for an administrative determination by the Project Director. The following procedure will be employed in making such determinations.

A. The Project Director will establish at the Center a Fact-Finding Committee consisting of the Assistant Project Director in Charge of Community Management, the Head of the Internal Security Section, and the Project Attorney. It shall be the duty of the Fact-Finding Committee to secure and examine any evidence which is available at the Center, or which can without undue delay be secured from any other source, bearing upon the activities of any individual suspected of past or probable future interference with the peaceful and orderly processes of center administration. After review of all the evidence available to the Fact-Finding Committee, that Committee will submit to the Project Director a docket for each individual case considered by it, with its appraisal of the evidence and its recommendation as to whether, in the interest of a peaceful and orderly administration, the individual should be transferred to Area B or an isolation center.

B. Upon receipt of the docket from the Fact-Finding Committee, the Project Director shall review the evidence and recommendations submitted by the Committee, and may in his discretion hold an interview with the person whose transfer is under consideration. No interview need be held in cases in which the evidence supporting the Committee's recommendation is so clear as not to leave room for any reasonable doubt as to the correctness of the recommendation.

If an interview is held, the Project Director shall inform the person interviewed of the nature of the reports and evidence which have been produced concerning him, and shall allow him to make such further comments or statements, or produce such further evidence, as he may desire. If the Project Director concludes that the individual's continued residence in the main area of the center is dangerous to the peaceful and orderly administration thereof, he may order his transfer to Area B or an isolation center.

2. Residence of any individual in Area B or in an isolation center shall be for an indefinite period. Any individual who wishes to be transferred to and permitted to reside in the main

area of the Center may at any time risk to be interviewed by the Project Director and may submit further information bearing upon his case. The Project Director shall at his convenience hold further interviews and examine all information and evidence submitted. If the Project Director concludes that transfer of the applicant, or of any other individual residing in Area B or in an isolation center, to the main area of the Center will involve no danger to the peaceful and orderly administration thereof, he shall order such transfer.

3. A. All policies of WRA applicable to the main area of the Center shall be applicable to Area B and to any isolation center which may be established, except that:

(1) All mail going into or coming from Area B or an isolation center will be censored.

(2) No visiting will be permitted between the residents of Area B or the isolation center and the main area of the Center except under extraordinary circumstances and with the express permission of the Project Director.

(3) Visiting with the residents of Area B or the isolation center will not in any event be permitted within the physical limits of Area B or the isolation center, but may take place only in rooms provided for the purpose outside the evacuee residential area and in the presence of witnesses if the Project Director so determines.

(4) Families of individuals removed to Area B or to an isolation center will not be allowed to accompany such individuals into the separated area.

B. Patrol of the external boundaries of Area B and of the isolation center will be the responsibility of the Military Police, in accordance with agreements between the War Relocation Authority and the War Department.

4. Should later developments require the transfer of any women into a separated area, separate living quarters and feeding arrangements will be provided for them.

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